

BILLS TO MAKE PERMANENT THE MANUFACTURING CLAUSE OF THE COPYRIGHT ACT

HEARING BEFORE THE SUBCOMMITTEE ON PATENTS, COPYRIGHTS AND TRADEMARKS OF THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 1822

A BILL TO AMEND THE COPYRIGHT ACT IN SECTION 601 OF TITLE 17,
UNITED STATES CODE, TO PROVIDE FOR THE MANUFACTURING AND
PUBLIC DISTRIBUTION OF CERTAIN COPYRIGHTED MATERIAL

AND

S. 1938

A BILL TO MAKE PERMANENT THE REQUIREMENTS OF THE
MANUFACTURING CLAUSE OF THE COPYRIGHT LAW

JANUARY 21, 1986

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BILLS TO MAKE PERMANENT THE MANUFACTURING CLAUSE OF THE COPYRIGHT ACT

TUESDAY, JANUARY 21, 1986

U.S. SENATE,
SUBCOMMITTEE ON PATENTS, COPYRIGHTS AND TRADEMARKS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman of the subcommittee) presiding.

Also present: Senators Thurmond, Leahy, and Metzenbaum.

Staff present: Steve Metalitz, Randolph Collins, John Podesta, Pam Batstone, Sharon Donovan, Isabelle Rodriguez, Beverly McKittrick, Thad Strom, Eddie Correia, and Carolyn Osolinik.

OPENING STATEMENT OF HON. CHARLES McC. MATHIAS, JR., A U.S. SENATOR FROM THE STATE OF MARYLAND, CHAIRMAN, SUBCOMMITTEE ON PATENTS, COPYRIGHTS AND TRADEMARKS

Senator MATHIAS. The subcommittee will come to order. We will try to begin the new year by starting on time as often as possible. Our record will probably deteriorate as the year wears on.

On the 1st of July of this year, one of the familiar features of the American copyright law will disappear from the statute books. On that date the manufacturing clause of the Copyright Act is scheduled to expire.

Today, the Subcommittee on Patents, Copyrights and Trademarks is meeting to take testimony on two bills that would breathe new life into this particular provision of the law. The manufacturing clause has been revised several times since it first appeared in copyright law in the year 1891, so it has already had a rather lengthy existence.

In its current form, the clause denies full copyright protection to American authors whose work is not printed either in the United States or in Canada. Thus, the fate of the manufacturing clause will affect both commerce in goods and the free trade of ideas across national borders.

The great poet Robert Frost, who has been very much in our memory in the last few days because of his participation in the 1961 Presidential inauguration just 25 years ago, once wrote that "good fences make good neighbors." That is true in New England farm country, but the question is whether it is always true in international trade; sometimes the reverse seems to be indicated.

Regardless of whether ideas, goods or services are the commodity, the general tendency is to encourage trade, believing that that exchange will be of mutual benefit.

Perhaps as we examine the manufacturing clause, we should keep in mind the query that Robert Frost advanced. He asked, "Before I built a wall, I would ask to know what I was walling in or walling out, and to whom I was like to give offense."

Throughout its history, the manufacturing clause has served not to promote copyright principles, but to protect the printing industry. During that century, the economic context in which the clause operates has been transformed.

When the manufacturing clause first became part of our law, the United States was a net importer of copyrighted materials, most of which appear in printed form. Today, we are the world's greatest exporter of copyrighted products carried by a dazzling variety of media.

The growth and the vitality of the copyright-related industries depends on strong copyright protection that gives authors and artists the incentive to create the work that copyright protects. At the same time, the manufacturing clause is perceived as assuring steady employment to American printing workers.

This subcommittee must examine whether the copyright system would be hurt or helped by the expiration of the manufacturing clause. We must also consider the clause's impact on our international obligations in both trade and copyright; its significance for our domestic printing industry; its effect on American jobs; and its repercussions for the creative men and women upon whom the success of the copyright-related industries depends.

The 1976 Copyright Act slated the manufacturing clause for extinction in 6 years. In 1982, the 97th Congress, acting over the veto of President Reagan, granted the clause a 4-year reprieve.

The two proposals that are before us today, by contrast, extend different versions of the manufacturing clause in perpetuity. Senate bill 1938 simply deletes the expiration date of the existing clause. Senate bill 1822 expands the coverage of the clause to include all printed material, and also provides a mechanism to exempt from the clause any country meeting certain copyright and trade standards.

Today, we will hear representatives from three executive branch agencies, from the Copyright Office, and from the printers, the publishers, the unions, the authors, and from other interested parties.

Now, as always, we have to suffer from constraints of time, so I am going to ask that witnesses limit their oral statements to not more than 5 minutes each. The full written text of the statements will, of course, appear in their entirety in the record.

I am going to direct that the record be kept open until the February 28 for additional responses to followup questions and for further comments that witnesses may have.

We will include a statement from Senator Thurmond into the record at this point.

[S. 1822, S. 1938, and the prepared statement of Senator Thurmond follow:]

99TH CONGRESS
1ST SESSION

S. 1822

To amend the Copyright Act in section 601 of title 17, United States Code, to provide for the manufacturing and public distribution of certain copyrighted material.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 1 (legislative day, OCTOBER 28), 1985

Mr. THURMOND (for himself, Mr. LEAHY, Mr. LAXALT, Mr. HATCH, Mr. GRASSLEY, Mr. SPECTER, Mr. McCONNELL, Mr. SIMON, Mr. SASSE, Mr. DIXON, Mr. DANFORTH, and Mr. QUAYLE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Copyright Act in section 601 of title 17, United States Code, to provide for the manufacturing and public distribution of certain copyrighted material.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Manufacture and Public
4 Distribution of Certain Copyrighted Material Act".

5 SEC. 2. (a) The heading for section 601 is amended by
6 striking out "copies" and inserting in lieu thereof "printed
7 material".

1 (b) Section 601(a) of title 17, United States Code, is
2 amended by—

3 (1) striking out “Prior” through “except” and
4 inserting in lieu thereof “Except”;

5 (2) striking out “copies” through “literary” and
6 inserting in lieu thereof “printed”;

7 (3) striking out “or Canada.” and inserting in lieu
8 thereof “or unless—”; and

9 (4) adding at the end thereof the following:

10 “(1) the United States Trade Representative has
11 certified to the Congress that the country of export
12 currently is providing adequate and effective means
13 under its laws for foreign nationals to secure, to exer-
14 cise, and to enforce exclusive rights in copyrights; and

15 “(2) either—

16 “(A) the United States Trade Representative
17 has certified that the country of export currently
18 imposes no material nontariff barriers and, to the
19 extent inconsistent with tariff bindings entered
20 into by the country of export with the United
21 States, imposes no tariff barriers to trade in
22 printed material; or

23 “(B) the country of export has in force a free
24 trade agreement with the United States governing

1 trade in printed material entered into pursuant to
2 section 401 of the Trade and Tariff Act of 1984.

3 "(3) any certification made pursuant to this sub-
4 section shall be withdrawn if any of the matters
5 certified to cease to exist."

6 (c) Section 601(b) of title 17, United States Code, is
7 amended by striking out paragraphs (6) and (7) and inserting
8 in lieu thereof the following:

9 "(6) where importation is sought for works de-
10 scribed in, and in accordance with the requirements of,
11 Article II, paragraph 1, of the Agreement on the Im-
12 portation of Educational, Scientific and Cultural
13 Materials (the Florence Agreement) or Article IV,
14 paragraph 5, of the Protocol to the Agreement on the
15 Importation of Educational, Scientific and Cultural Ma-
16 terials (the Nairobi Protocol)."

17 (d) Section 601(c) of title 17, United States Code, is
18 amended by striking out "or Canada" each place it appears.

19 (e) Section 601(d) of title 17, United States Code, is
20 amended to read as follows:

21 "(d) In the event that any work is imported in violation
22 of this section, in addition to other remedies available, an
23 infringer shall have a complete defense in any civil action or
24 criminal proceeding for infringement of the exclusive right to

1 reproduce and distribute copies of the work if the infringer
2 proves—

3 “(1) that copies of the work were imported in
4 violation of this section;

5 “(2) that the infringing copies were manufactured
6 in the United States; and

7 “(3) that the infringement was commenced before
8 the effective date of registration for an authorized
9 edition of the work.”.

10 (f) Section 601(e) of title 17, United States Code, is
11 amended by striking out “or Canada”.

12 (g) The item relating to section 601 in the table of
13 sections for chapter 6 of title 17, United States Code, is
14 amended to read as follows:

“601. Manufacture, importation and public distribution of certain printed material.”.

15 SEC. 3. This Act and the amendments made by this Act
16 shall be effective on the date of enactment, and the provisions
17 of section 601(a), as amended by this Act shall apply to
18 imports on or after the date of enactment.

99TH CONGRESS
1ST SESSION

S. 1938

To make permanent the requirements of the manufacturing clause of the copyright law.

IN THE SENATE OF THE UNITED STATES

DECEMBER 13 (legislative day, DECEMBER 9), 1985

Mr. METZENBAUM (for himself, Mr. LEAHY, Mr. SIMON, Mr. SPECTER, and Mr. DECONCINI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To make permanent the requirements of the manufacturing clause of the copyright law.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 601(a) of title 17, United States Code, is
4 amended by striking out "Prior to July 1, 1986, and except"
5 and inserting in lieu thereof "Except".

○

STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Mr. Chairman: I want to commend you for holding this important hearing. The hearing this morning focuses on important legislation which would extend indefinitely the manufacturing clause of the copyright Act. The two bills that have been introduced are both designed to accomplish this goal.

The bill which I introduced, along with Senator Leahy, would extend the clause, while providing liberal provisions for foreign countries to be exempt from the manufacturing clause. At the same time it expands coverage of the clause to all printed materials. Senator Metzenbaum, along with other Senators, has introduced S. 1938, which simply provides a permanent extension of the manufacturing clause.

As we are all aware, the manufacturing clause is scheduled to expire on June 30 of this year. It is incumbent upon this Congress to take early action on extending the manufacturing clause to prevent a loss of American jobs to foreign competition. The manufacturing clause has stood alone as the only U.S. printing import restriction while many foreign countries have enacted substantial tariff and non-tariff barriers. U.S. printing and publishing have faced the problem of some Pacific basin countries engaging in wholesale copyright piracy, thereby destroying markets for these American industries.

If the manufacturing clause is allowed to expire, the printing industry would suffer a devastating blow. During consideration of the manufacturing clause in the 98th Congress, a Department of Labor study estimated that eliminating the clause would cause a loss of up to 172,000 jobs in the printing industry and a total loss of as many as 367,000 job opportunities throughout our economy as a result of foreign competition. Simply stated, the bill that Senator Leahy and I have introduced is about jobs, American jobs. Will the American jobs in the printing industry be saved or will they be stamped out by unfair foreign competition?

The bill which Senator Leahy and I introduced would have the manufacturing clause cover "printed material" and avoid the cumbersome phrase: "copies of a work consisting preponderantly of non-dramatic literary materials." In addition, this legislation would provide for an exemption to those printed imports from countries that provide copyright protection to U.S. authors and that are certified by the U.S. Trade Representative as having no material non-tariff barriers to trade in printed material. By allowing for exemptions under certain circumstances, the manufacturing clause would become an instrument for free trade by offering incentives for countries to remove harsh non-tariff barriers and to provide copyright protection in their country to works by U.S. authors.

Finally, our legislation would close a loophole that currently exists in the manufacturing clause which allows a U.S. author to transfer rights to reproduction to a foreign agent and thereby circumvent the intent of the clause by exercising the transfer right given the U.S. author. S. 1822 would prohibit this type of activity that violates the very spirit of the manufacturing clause.

In conclusion, I would like to thank the able Senator from Vermont, Senator Leahy, for the fine work and support he has contributed to this legislation, and I encourage this subcommittee to adopt our prudent proposal.

We welcome the distinguished witnesses who are here this morning, and I look forward to your testimony.

Senator MATHIAS. Our first witnesses today will include the Register of Copyrights, Mr. Ralph Oman; the Deputy Assistant Secretary for International Finance and Development of the Department of State, Mr. William Milam; Mr. Alan Holmer, the general counsel of the Office of the Trade Representative; and the Commissioner of Patents and Assistant Secretary of Commerce, Mr. Donald Quigg.

Gentlemen, please come to the table. Since you are veterans of this process, I do not have to explain our red and green lights. In fact, you may have invented it. Mr. Oman, will you begin, since you were first on the list, unless you prefer some other order?

STATEMENT OF A PANEL CONSISTING OF RALPH OMAN, REGISTER OF COPYRIGHTS, LIBRARY OF CONGRESS, WASHINGTON, DC; DONALD J. QUIGG, COMMISSIONER OF PATENTS AND TRADEMARKS, AND ASSISTANT SECRETARY, U.S. DEPARTMENT OF COMMERCE, WASHINGTON, DC; WILLIAM B. MILAM, DEPUTY ASSISTANT SECRETARY FOR INTERNATIONAL FINANCE AND DEVELOPMENT, BUREAU OF ECONOMIC AND BUSINESS AFFAIRS, DEPARTMENT OF STATE, WASHINGTON, DC; AND ALAN F. HOLMER, GENERAL COUNSEL, OFFICE OF THE U.S. TRADE REPRESENTATIVE, WASHINGTON, DC

Mr. OMAN. That is fine, Mr. Chairman; I would be happy to begin.

The Copyright Office welcomes the opportunity to testify on S. 1822 and S. 1938. Over the years, the Copyright Office has traditionally supported the effort to reduce the scope of the manufacturing clause. And more recently, the Office has supported the effort to terminate it on a date certain.

Whatever the merits of protecting the printing industry from foreign competition, the Copyright Office has always contended that the manufacturing clause is a blunt instrument rather than a surgeon's scalpel.

In this battle between the printers, the publishers and, indirectly, the reading public, the manufacturing clause makes American authors bear the brunt of the penalty. So let me start by saying again that the Copyright Office would prefer to see the manufacturing clause terminate as scheduled on July 1, 1986.

With only 5 minutes to speak, I will not catalog my specific problems with the manufacturing clause or give you a line-by-line critique of S. 1822 or S. 1938. I do that in my written testimony and I ask that it be included in the record.

Senator MATHIAS. Without objection, it will be included in the record.

Mr. OMAN. Instead, I will propose several alternatives to the bills now on the table. Many of us remember 4 years ago, the Senate heard these same well-reasoned pleas from the Commissioner of Patents and Trademarks and from the former Register of Copyrights. You saw the same studies and you listened to the same cries for help from the authors and the publishers. All went unheeded. The Senate voted to extend the manufacturing clause, as you mentioned. The President vetoed it, but the Senate voted 84 to 9 to override the veto. Only nine Senators stood loyally with their President. I think, Mr. Chairman, you were one of the nine.

In those 4 years not much has changed. Here we are again thumping the same tub. While we are here making these cogent arguments, Senator Thurmond has already lined up eight Judiciary Committee cosponsors for his bill to extend the manufacturing clause permanently.

One thing has changed in the intervening 4 years. Senator Thurmond has offered us a fresh approach to the manufacturing clause dilemma. He offers a trade approach and he conditions his elimination on a finding by U.S. Trade Representative that a country gives fair treatment to U.S.-copyrighted works.

Maybe it is time for the publishers to meet the printers halfway on this issue. The subcommittee might want to consider a compromise, one that gives the printing industry some of the protection it needs without doing long-term damage to the copyright industries, and also without foreclosing any of our options on the Berne Convention.

In several recent amendments to title 19, which is the trade title of the United States Code, Congress has used the trade laws to strengthen copyright protection Americans enjoy overseas. I have in mind the GSP extension and the Caribbean Basin Initiative.

So in the case of the manufacturing clause, Congress could reach the policy goals of the clause, and do so more quickly and perhaps more effectively, by amending the trade law rather than the copyright law.

The Steel Import Stabilization Act of 1984 protects the steel industry from unfair competition, and we could amend the trade law in the same way to guarantee fair trade in English language works by U.S. authors without jeopardizing our other copyright goals.

I have with me today a draft of an amendment to Senator Thurmond's bill, S. 1822, and I would be happy to share it with the subcommittee. Like S. 1822, it would prohibit the importation into the United States of American books now covered by the manufacturing clause. It would do so when the books are manufactured in a country that the U.S. Trade Representative fails to certify as meeting criteria substantially similar to those contained in the Thurmond bill.

But unlike S. 1822, it moves the protection from the copyright law over to the trade law. The draft amendment also incorporates Senator Thurmond's exemption that invokes the Florence agreement.

To retain her current exempt status, Canada would need certification from the U.S. Trade Representative just like any other country. Whether or not she would qualify is very much an open question.

I am sure most people here today who oppose the manufacturing clause would initially oppose this compromise, which would effectively give the clause new life. They want to put it out of its misery once and for all.

But if they thought about the alternatives, they might accept it as the lesser of two evils. S. 1822, if amended, might even turn into a consensus bill that the subcommittee could poll out without a formal markup before the automatic discharge at the end of February.

With its focus on trade, the amendment would probably require referral to the Finance Committee for a brief period, but that Committee, too, could act swiftly if a consensus developed.

Finance generally favors this type of reciprocal, leveraged approach to international copyright protection and it included a version of it in CBI and the GSP extension. Senator Danforth has said on several occasions that he sees elimination of the manufacturing clause as a major trade concession and he does not see why the United States should just give it away unilaterally without getting anything in exchange.

In fact, the proposed amendment would give U.S. Trade Representative some useful bargaining power that he could parlay into trade concessions both for the printers and for the copyright industries.

So even with the shared jurisdiction with the Finance Committee, the amendment could get to the House in time to meet the July deadline. If the chairman thinks it is worth pursuing, I would be happy to provide assistance and I would try to convince the components of the U.S. copyright industries that they should, if not support it, at least remain silent.

With this compromise, Congress could give the printing industry the protection it wants, without violating the Berne Convention, and would move the manufacturing clause into the Trade Act where it belongs and out of the copyright law where it has always stuck in our craw.

If you decide not to pursue this type of compromise, you may want to consider a less drastic alternative to the perpetual extension proposed in S. 1938, and we have several possibilities on that score, too.

So the subcommittee at this point has several options. The Copyright Office would recommend the following in order of preference: first, permit the clause to expire as scheduled on July 1; second, adopt the Thurmond bill, with modifications, moving protection from title 17 to title 19; third, suspend the clause subject to some type of automatic trigger; and, fourth, extend the clause for maybe a 3- to 5-year period rather than an unlimited period while Congress studies U.S. adherence to the Berne Convention and examines the adequacy of international copyright protection for U.S. works.

I reserve the balance of my time and would be happy to respond to questions at the appropriate moment.

[Mr. Oman's submissions for the record follow:]

PREPARED STATEMENT OF RALPH OMAN
REGISTER OF COPYRIGHTS
ASSISTANT LIBRARIAN FOR COPYRIGHT SERVICES

Mr. Chairman and members of the Subcommittee I appreciate the opportunity to appear here today and testify on S. 1822, (introduced by Senator Thurmond), the "Manufacture and Public Distribution of Certain Copyrighted Material Act." This bill would amend the Copyright Act of 1976, 17 U.S.C. §601 ("manufacturing clause"), by prohibiting all foreign manufacture of "printed material" of U.S. works unless the U.S. Trade Representative certifies that certain conditions have been met in the foreign country in which the U.S. work is to be printed.

Senator Metzenbaum has introduced S. 1938; Representative Frank has introduced H.R. 3465; Representative Gray has introduced H.R. 3890: these bills would extend the "manufacturing clause" of the Copyright Act indefinitely. In contrast to these simple, permanent extension bills, S. 1822 is more complicated and proposes to extend both the duration and scope of the manufacturing clause.

If enacted, the effect of S. 1822 will be to return to the past with a vengeance and further complicate already complicated international trade and copyright relationships.

As discussed below the manufacturing clause has long been a bone of contention between copyright proprietors on the one hand, and the printing unions and companies on the other. The 1976 Act attempted to provide a compromise that would appease all interests. Section 601 was designed to expire on July 1, 1982; legislation that year extended the clause to July 1, 1986. Today, Congress is considering legislation that would extend the clause indefinitely and would dramatically increase its coverage.

A short review of the history of the manufacturing clause is necessary to put in perspective some of the problems that the Copyright Office foresees if any of these bills is enacted and to clarify why the Copyright Office has traditionally opposed the inclusion of protective trade legislation in the Copyright Act.

I. DEVELOPMENT OF THE MANUFACTURING CLAUSE AS A PART OF COPYRIGHT LAW ^{1/}

A. Creation.

The manufacturing clause appeared first in the 1891 Copyright Act. Section 3 of the Act specifically required that in order to be protected by copyright in the United States, books and certain other works^{2/} had to be printed within the United States. The manufacturing clause was created to protect those who feared that granting unrestricted U.S. copyright protection to British authors would enable British publishers to dominate the American book market. The clause was the price Congress extracted for finally yielding to the pressure of both American and foreign authors to recognize works by nonresident aliens as being eligible for U.S. copyright protection.

B. Reduction in Scope.

In 1905 Congress amended the manufacturing clause to permit works published abroad in languages other than English to be eligible for ad interim copyright.^{3/} The 1909 Act added printing and binding to the manufacturing requirements, but otherwise reduced the coverage of the clause, especially by exempting books and periodicals of foreign origin in a language other than English. The 1909 Act retained a very limited ad interim copyright system for English language works first

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1. The Copyright Office submitted a detailed history of the development of the manufacturing clause in American copyright law in its 1981 report to Congress. Consequently, this statement will only note a few of the major milestones of that development. See Manufacturing Clause Report, July, 1981, App. A, "Legislative History and Text of the Clause."
 2. "That in the case of a book, photograph, chromo, or lithograph, the two copies of the same required to be delivered or deposited as above shall be printed from type set within the limits of the United States, or from plates made therefrom..." Act of March 3, 1891, ch. 565, §3, 26 Stat. 1106, 1107.
 3. Ad interim copyright provided a grace period wherein foreign authors could receive U.S. copyright protection for one year during which time they could comply with all of the formalities of the copyright act and thereby extend protection to the full term, provided that registration was made within 30 days of first publication. Act of March 3, 1905, ch. 1432, 33 Stat. 1000.

published abroad.^{4/} Thus, the manufacturing clause now only applied to works written in English.

During the period between enactment of the 1909 Act and the 1976 Act, Congress on several occasions attempted to cut back the scope of, or completely repeal the manufacturing clause, with mixed results. At one time in the mid-Thirties Congress considered an outright repeal of the clause in an attempt to bring our copyright laws into compliance with the Berne Convention for the Protection of Literary and Artistic Works.

In 1949 Congress provided a more realistic exception for foreign authors writing in English by expanding the old ad interim copyright and giving these authors up to six months to register and thus acquire a five-year United States copyright. The exception included the privilege of importing up to 1500 copies of a work during the interim period.^{5/}

In 1954 the clause was amended again in order to meet the requirements imposed by U.S. ratification of the Universal Copyright Convention. This amendment limited application of the manufacturing clause primarily to U.S. authors and exempted UCC works by nonresident foreigners. American authors could only get ad interim copyright unless their works were first published in full compliance with the manufacturing clause.^{6/}

C. The 1976 Copyright Act.

1. The Revision Process. All of the manufacturing clause issues that had been aired heretofore were reexamined during the long revision period that eventually produced the 1976 Act. Both the Copyright Office and the Department of State opposed retention of the clause. The Copyright Office questioned whether denial of copyright to works printed abroad really benefitted the U.S. printing industries and urged that if relief were needed it should not be done by destroying an

4. Act of March 4, 1909, ch. 320, §15, 35 Stat. 1078.

5. Act of June 1, 1949, Pub. L. 84, ch. 171, §1, 63 Stat. 153.

6. Pub. L. 743, 61 Stat. 654, 656-8.

author's copyright. Publishers and other opponents of the clause argued 1) that none of the calamities predicted by printers and manufacturers when the clause was cut back in 1954 had come to pass and 2) that, absent the manufacturing clause, works formerly subject to it would nonetheless continue to be printed in the U.S.

Book manufacturers, however, insisted on retention of the clause and urged that they could not compete with the lower wages found among foreign printers. They contended that repeal of the clause would result in loss of business to foreign markets and that any loss of business could mean severe harm and loss of employment to the U.S. printing and book manufacturing industries.

2. The Manufacturing Clause in the 1976 Act. A manufacturing clause was retained in §601 of the 1976 Act. This clause was based on a compromise worked out in 1967-68; Generally §601 applies to works by U.S. authors consisting "predominantly of nondramatic literary material that is in the English language." If such a work is protectable under the Copyright Act, it must be manufactured in the United States or Canada^{7/} in order to be imported into or distributed in the United States. 17 U.S.C. §601(a).

Subsection (b) spells out exceptions to the application of the manufacturing clause, and subsection (c) permits the use of imported reproduction proofs or computer tapes, where the making of plates from which copies are printed, and the printing or other final process of producing multiple copies, and any binding of the copies have been performed in the United States or Canada. The 601(b) exceptions allow the owner of copyright in a work, that has not been manufactured in accordance with the requirements of section 601(c), to import and publicly distribute copies of the work in the United States under certain circumstances. Generally, under section 601(b)

7. The Canadian exemption was included on the ground that Canadian labor costs were equivalent to the United States and on the private understanding that Canada would accept the Florence agreement. This has not taken place.

(2), no more than two thousand copies of any one work may be imported where the U.S. Customs Service is presented with an import statement issued under the seal of the Copyright Office. Additional import exceptions are set forth in clauses (3) to (7) of section 601(b).^{8/} There is an exception by which an individual American author may arrange for the publication of his or her work by a foreign publisher. This exception places the manufacturing limitation more firmly on U.S. publishers than upon authors.

D. The 1982 Process.

As enacted in 1976, section 601 also provided that the manufacturing clause would expire on July 1, 1982.^{9/} Senator John McClellan, chairman of the Subcommittee on Patents, Trademarks and Copyrights, and Senator Hugh Scott, the Republican leader and ranking minority member of the Subcommittee, at the request of Senator Robert Griffen of Michigan, asked the Copyright Office in a letter dated September 30, 1976, to undertake a study of the economic ramifications and possible dangers to the U.S. printing and book manufacturing industry if this protection were ended.^{10/}

1. Copyright Office Report. The Copyright Office acted on the request of Senators Scott and McClellan. An announcement in the Federal Register noted that the Copyright Office would conduct a hearing to give all interested parties an opportunity to express their views on the scheduled phase-

8. In accordance with these provisions, the prohibition on importation of copies does not apply where: (a) importation is sought "under the authority or for the use, other than in schools, of the Government of the United States or of any State or political subdivision of a State;" (b) importation by "any person" for use, and not for sale, of no more than one copy of any work at any one time, or with respect to copies forming part of such person's personal baggage when arriving from outside the U.S.; (c) importation for use, and not for sale, by any organization "operated for scholarly, educational, or religious purposes and not for private gain, with respect to copies intended to form a part of its library;" and (d) copies reproduced in raised characters for the use of the blind.

9. Conf. Rep. No. 1733, 94th Cong., 2d Sess. 80 (1976).

10. The report was to be made in sufficient time prior to July 1, 1982, to allow Congress to retain the manufacturing clause if so warranted.

out of the manufacturing clause and that the Congressional Research Service (CRS) of the Library of Congress would be asked to prepare an economic analysis. The announcement also solicited written comments. The Copyright Office held a hearing on January 13, 1981. Representatives from the printing industry, the Authors League of America, the Association of American Publishers (AAP), and an economist from the Department of Commerce testified at this hearing.^{11/} Other written statements were filed.^{12/}

Not surprisingly, the interested parties repeated the arguments they had made during the revision period, *i.e.*, proponents of retention urged that repeal would result in a substantial loss of the printing market to foreign competitors, primarily due to lower labor costs, while opponents of retention urged that any labor advantage would be offset by increased costs in transportation and paper and by loss of quality.

The Copyright Office submitted its report to Congress on July 22, 1981. In addition to the hearing record and accompanying comment letters, the report was based on the CRS Report.^{13/} CRS examined the structural, technological, and economic characteristics of the book publishing and manufacturing industries as a background to their assessment of economic evidence about the possible effects of the elimination of the clause. As part of their study, CRS sent out a questionnaire and invited all interested parties to respond. In assessing economic impact, CRS considered the diverse estimates made by printers and publishers and adjusted these estimates by algebraic and/or reasonable-man assumptions. CRS concluded that the large absolute reductions in book printing predicted by proponents of retention were unlikely. CRS estimated the

11. See, App. C, supra note 1, for the hearing transcript.

12. Id., App. D.

13. Economic Concerns Relating to the Elimination of the Manufacturing Clause of the U.S. Copyright Law, Congressional Research Service, Rep. No. 81-178E, April 30, 1981.

likely long-term import level to be between 10-19%. It also noted that while small reductions or a slowdown in growth in book printing employment may take place, this impact could be eased.^{14/} CRS completely discounted the arguments that the industry qualified for special protection (as an infant industry or for national defense purposes).

On the basis of its investigation of all relevant materials, including the hearing record, written comments, and the CRS report, the Copyright Office made 37 findings^{15/} that led the Office to conclude that there was no justification for a manufacturing clause within the copyright law and that there was no evidence to suggest that circumstances had changed to warrant Congress to withdraw from its 1976 conclusion that the manufacturing clause should expire on July 1, 1982. Finally, the Copyright Office urged that "If, after that date, economic harm should befall book manufacturers due to increased imports, mechanisms are now available to protect their interests without restricting the freedom of choice of American copyright owners."^{16/}

2. Legislative Activity. Meanwhile, Representative Ashbrook introduced H.R. 3940 in the House on June 17, 1981, and Senator Thurmond introduced S. 1880 in the Senate on November 27, 1981. Both bills would have made the manufacturing clause permanent. Representative Kastenmeier introduced H.R. 6198 in the House on April 28, 1982. This bill, seen as a compromise measure, extended the manufacturing clause until July of 1986.^{17/}

14. *Id.* at 203-4; 180. The expert who testified for the Book Manufacturers Institute had predicted an import penetration of 30-45% and that 14,000 jobs would be at risk after 5-7 years. Another representative of the printing industry had indicated 40,000 jobs would be lost by the year 2000.

15. Copyright Office Report, *supra* note 1, at 132 *et seq.*

16. *Id.* at 137. *See* App. I.

17. Kastenmeier introduced H.R. 5870 on March 17, 1982; it proposed to extend the expiration date to "1985." H.R. 5870, 97th Cong., 2d Sess.

The House Subcommittee on Courts, Civil Liberties, and the Administration of Justice held a hearing on H.R. 3940 on December 2, 1981. On May 27, 1982, the Subcommittee on Trade of the House Ways and Means Committee held a hearing on H.R. 6198.^{18/} The usual issues were discussed at both of these hearings. Proponents of retention of the manufacturing clause urged that allowing the clause to expire would cause severe economic problems for the United States.

A representative from the Department of Labor testified that their empirical study of the economic impact demonstrated that expiration of the manufacturing clause might result in the loss of from 80,000 to 170,000 job opportunities in the U.S. printing and publishing industries.^{19/} This representative attributed the variance in studies to the focus in other studies solely on the book sector and also to the problems encountered in determining which workers were covered by the manufacturing clause, and how many of these would be adversely affected.^{20/}

The Book Manufacturers' Institute discussed their expert's report which had concluded after several recalculations based on fluctuation of currencies that 30-45% of the United States market for book manufacturers could be completely served by foreign production.^{21/}

Representatives from the American Federation of Labor urged that expiration would result in publishers and printers

18. Extension on the Manufacturing Clause of the Copyright Law: Hearing on H.R. 6198 Before The Subcomm. on Trade of The House Comm. on Ways and Means, 97th Cong. 2d Sess. (1982).

19. Id. at 14. The Department of Labor Study indicated that expiration might cause related job losses in firms that supplied the printing and publishing industries, bringing the total to 170,000 to 367,000 lost job opportunities in the U.S. Id. at 15.

20. Id. at 14. The Copyright Office noted that the CRS estimate of 5,000 to 9,000 jobs was more accurate and observed that most of the sectors within the publishing and printing industries referenced in the Department of Labor Study were not even covered by the manufacturing clause. [(Letter from David Ladd, Register of Copyrights, to Representative Kastenmeier, December 17, 1981).] Id. at 26.

21. Id. at 61-64.

moving out of the United States. They also noted that other countries had grandfathered in tariff and trade barriers to protect these industries.^{22/}

A witness from the Office of the U.S. Trade Representative also testified about international implications and proposed a compromise that would permit the President to terminate the clause after national and international consultations.^{23/}

A panel of those opposed to retention of the manufacturing clause urged that it discriminated against American authors. The Association of American Publishers again stated that publishers would not flock to foreign printers because considerations other than cheap labor favored printing in the U.S. e.g., timing, transportation and insurance costs, and quality controls.^{24/}

Both the House and Senate passed H.R. 6198, and the President vetoed the bill on July 8, 1982; on July 13, Congress overrode the veto by roll calls in each house. Thus, the bill became a law without presidential approval.^{25/}

E. The ITC Report.

When the manufacturing clause was extended, the House Committee on Ways and Means directed the United States International Trade Commission (ITC) to undertake an investigation of the economic effects of terminating the clause, including an assessment of: (1) the effect on employment; (2) the effect on imports and exports; and (3) the long-term effect on competition between U.S. and foreign firms engaged in printing and related activities.

The ITC examined published information, ITC files, and government materials; it also sent a questionnaire to domestic publishers and printers. On the basis of this inves-

22. Id. at 72-76.

23. Id. at 3.

24. Id. at 76 et seq.

25. Pub. L. 97-215.

tigation, the ITC concluded "that there would be a minimal impact on the domestic printing and publishing industry if the manufacturing clause of the copyright law were to be terminated."^{26/} The ITC concluded that only 2-10% of the books now being printed in the United States would be lost to foreign printers, that only 1,400 to 6,850 jobs would be lost in U.S. printing and allied industries, and that in the long run domestic firms would be expected to regain all of their lost sales as U.S. technological advancements diminished any labor-cost advantages in the foreign markets.^{27/}

F. General Agreement on Tariffs and Trade Panel on the Manufacturing Clause.

One of the central questions that arises concerning the proposed "manufacturing clause" legislation is its effect on the United States' obligations under the General Agreement on Tariffs and Trade (GATT). The GATT is an international trade agreement entered into by the United States under the Trade Agreement Act of 1934 and has as its contracting parties most of the important trading nations of the world as participants.^{28/}

Some guidance on the potential effects of the pending manufacturing clause bills on United States GATT obligations can be obtained by examination of the GATT ruling on the effects of the manufacturing clause extension in 1982. Under

26. Study of the Economic Effects of Terminating the Manufacturing Clause of the Copyright Law: Report to the House Committee on Ways and Means, USITC Pub. 1402, 93 (1983).

27. Id. 93-100. See App. II for the executive summary of the ITC Report.

28. The GATT has three essential elements: First, it consists of lists or schedules of tariff concessions, that is, named products for which maximum tariff treatment has been agreed upon, with separate schedules for each contracting party; second, there is a code of agreed principles and rules governing the import and export trade of the contracting parties; and third, the GATT provides a forum through its periodic meetings for discussion and settlement of mutual problems of international trade. The Department of State, The General Agreement on Tariffs and Trade: An Article-by-Article Analysis in Layman's Language 1, (1961).

GATT dispute settlement provisions.^{29/} the European Economic Community (EEC) brought a complaint charging that the extension of the manufacturing clause in 1982 was violative of certain GATT provisions and requested an assessment of monetary damages.

In May of 1984, the GATT Council adopted the report of the panel which reviewed the ECC's complaint. After the GATT Council affirmed the panel's finding, the United States concurred. The panel found that the manufacturing clause was an import restraint inconsistent with Article XI of the GATT.^{30/} The panel then examined whether this inconsistency with Article XI could be justified under the Protocol of Provisional Application (PPA) which allows signatories such as the United States to apply provisionally the GATT agreements to the fullest extent not inconsistent with legislation existing on October 30, 1947. The panel ruled that the extension of the clause from 1982 to 1986 represented new legislation unprotected by the PPA exception for "existing legislation." The Panel found that the extension of the manufacturing clause beyond July 1, 1982 had the effect of nullifying or impairing benefits accruing to the European Economic Community under the GATT and recommended that the United States bring the clause into line with its obligations under the general agreement.^{31/}

29. The European Economic Community's complaint was brought under the GATT dispute settlement procedures of Articles XXII and XXIII. Article XXII allows for consultations between interested parties concerning the subject of the dispute and if the dispute is not resolved, the dispute is referred to all the contracting parties jointly. Under Article XXIII, once the consultation has taken place, a complaint is prepared followed by the appointment of a panel which holds an informal hearing allowing each party to present arguments and supporting evidence. Next the report of the panel is referred to all the contracting parties acting jointly who make final disposition of the dispute. Jackson, World Trade and the Law of GATT, 174-176 (1969).

30. Article XI establishes a general rule prohibiting the use of quantitative import and export restrictions through the use of quotas, licenses, or other measures. See Department of State, The General Agreement on Tariffs and Trade: An Article-by-Article Analysis in Layman's Language, 8 (1961).

31. GATT Doc. L/5609, pp 12-13.

The broader significance of the panel's findings and of the GATT Council's affirmation with United States concurrence seems to be the finding that once contracting parties take partial steps toward bringing inconsistent existing legislation into GATT conformity, they do not have the right to reverse those steps or to otherwise make the level of inconsistency greater.^{32/}

Therefore, it would seem this GATT finding on the present manufacturing clause extension should be examined very carefully in considering any effect of the pending bills on the United States' GATT obligations and on potential retaliatory action by our trading partners.^{33/}

II. ANALYSIS OF PENDING BILLS

A. S. 1822, (Thurmond Bill)

S. 1822, would substantially revamp the manufacturing clause. If enacted, all importation and public distribution in the United States of "printed material that is in the English language" authored by U.S. nationals or domiciliaries would be prohibited unless the exporting country had secured certification from the U.S. Trade Representative that certain conditions had been met. These conditions would include a finding that the exporting country provides effective copyright protection for foreign nationals and that either the exporting country lacks barriers to importation of "printed material" or the exporting country has entered into a free trade agreement with the United States. The exemption for Canada would be eliminated. The exceptions now contained in sections 601(b) (1)-(5) would be maintained without change, and exemptions 601(b)(6) and (7)^{34/} would be deleted. A new exemption would be created for works falling within Article II of the Florence Agree-

32. Rossler, The Provisional Application of the GATT, 19 J. OF WORLD TRADE L. 3, 294-95 (May-June 1983).

33. See Diplomatic Note from European Communities to United States Department of State, January 15, 1986.

34. See, pages 6-7, supra, of this statement.

ment^{35/} and Article IV of the Nairobi Protocol to that Agreement.^{36/}

Subsection 601(d) relating to the effect of importation or public distribution in violation of the manufacturing clause would be substantially recast. The explicit statement in the present law that an infraction of the restriction does not invalidate copyright would be eliminated. The punitive provisions establishing a defense to a copyright infringement action would apply to the entire work rather than only English language nondramatic literary material. Finally, the bill would delete the requirement in the present law that importation or public distribution violative of the restriction be authorized.

The Copyright Office believes there are many unique copyright issues raised by S. 1822 that deserve extensive study. Some of these issues are as follows:

1. Nomenclature. S. 1822 would sweep away the designation of "preponderantly of nondramatic literary material that is in the English language" in favor of "printed material that is in the English language." While the change superficially appears to simplify the provision, in practice it would raise many questions regarding coverage of the manufacturing restriction. Under the present manufacturing restriction, the phrase "preponderantly of nondramatic literary material that is in the English language" is readily identifiable. The term "literary work" is defined in section 101 of the copyright law. In application, a work falls outside of the manufacturing restriction if the non-literary material clearly exceeds the literary in quantity or importance. Sen. Rep. No. 94-473, 94th Cong., 1st Sess. p. 149 (1975). In cases where the manufacturing restriction arises, it applies only to the nondramatic literary material contained in the work.

35. Agreement on Importation of Educational, Scientific, and Cultural Materials, 17 U.S.T. 1835, T.I.A.S. 6129.

36. Protocol to the Agreement on the Importation of Educational, Scientific, and Cultural Materials (S. Treaty Doc. 97-2).

Under S. 1822 there is no definition of "printed material in the English language" and such a phrase has no readily ascertainable meaning. For example, would a few English language phrases in an otherwise foreign language work subject the entire work to the manufacturing restriction? Would a music book containing some English language lyrics be subject to the restriction? Questions regarding coverage are particularly important with respect to S. 1822 because the defense against an infringement action appears to apply to the entire work rather than just the English language literary material.

2. Extension of the manufacturing clause to areas never previously covered. Although the precise coverage of S. 1822 is difficult to determine, it does appear clear that a manufacturing clause applying to "printed material in the English language" would extend protectionism to areas of the copyright law never before subject to a manufacturing restriction. English language dramatic works such as a book of plays would apparently be subject to the manufacturing restriction. Previous manufacturing restrictions did not apply to printed dramatic works.^{37/} S. 1822 would apparently apply to a book of musical compositions containing some English language commentary. The proposed restriction may or may not apply to musical compositions alone containing English language lyrics. Previous manufacturing restrictions did not apply to musical compositions.^{38/} The proposed restriction may or may not apply to maps containing English language geographic designations. Such works were likewise exempted from previous manufacturing restrictions.^{39/} Foreign language works containing small amounts of English language text would apparently be covered by the proposal. The present manufacturing restriction exempts

37. Hervieu v. J.S. Ogilvie Pub. Co., 169 F. 978 (S.D.N.Y. 1909).

38. Oliver Ditson Co. v. Littleton, 67 F. 905 (1st Cir. 1895).

39. Hervieu, *supra*, 169 F. at 981.

such material because the printing industry lacked the capacity and desire to reproduce foreign language material.^{40/}

3. The imposition of executive trade policy on the rights of American nationals to enjoy copyright. Since first enacted into law in 1891, the manufacturing restriction has been criticized on the grounds that it injects trade policy into the U.S. copyright law. The enactment of S. 1822 would broaden the exposure of the copyright law to trade policy considerations. To date, all manufacturing restrictions have been mandatory conditions not subject to discretion by governmental officials. Copyright proprietors, by reading the statutory provision, could identify the conditions which applied to their enjoyment of copyright. Under S. 1822, for the first time a federal bureaucracy is given the power to change the conditions of copyright protection on the basis of trade considerations.

The interjection of executive discretion into the enjoyment of copyright is a matter never embraced by previous copyright laws. The securing and enjoying of copyright can clearly be conditioned on compliance with statutory requirements. In all previous copyright laws, however, the conditions are mandatory conditions ascertainable by reading the statutory language. Should S. 1822 become law, the applicable manufacturing restriction would not be readily identifiable by reading the statutory language. Instead, conditions would constantly fluctuate in accordance with the exercise of administrative discretion. At any given time some countries will be certified, others will be in the process of certification, and still others may be in the process of decertification. A copyright proprietor in arranging for the manufacture of his work would have to anticipate what a foreign country's status would be on the date when importation is planned.

4. Sanctions can only be applied against U.S.

40. Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law, 87th Cong., 1st Sess., 121 (1961).

nationals. As one of the conditions for certification, the U.S. Trade Representative must find that the country of export provides adequate and effective means for protecting under copyright the works of foreign nationals. It is contemplated that with the leverage of certification, the U.S. Trade Representative could encourage the establishment of copyright protection for U.S. citizens in countries lacking such protection. However, the possibility that exporting countries would grant concessions appears questionable because the sanctions applied by section 601(d) apply only to U.S. nationals.

S. 1822 imposes on the U.S. Trade Representative a difficult negotiating posture. On the one hand, the U.S. Trade Representative must stress to foreign countries the importance of copyright and urge those countries to enact copyright legislation protecting U.S. nationals. After taking this position, the U.S. Trade Representative must then threaten that if the foreign country denies U.S. nationals effective copyright protection, the U.S. Trade Representative will deny that country certification, which means that some U.S. copyright proprietors will be denied effective copyright protection in the United States.

5. Standards in judging nontariff and tariff trade barriers are unclear. Another condition for certification is a finding by the U.S. Trade Representative that the exporting country imposes no material nontariff trade barrier, and "to the extent inconsistent with tariff bindings entered into by the country of export with the United States," imposes no tariff barriers. In assessing an exporting country's nontariff trade barriers, the U.S. Trade Representative is directed to determine whether the nontariff barrier is "material." S. 1822 is silent as to the standards which the U.S. Trade Representative is required to apply to determine materiality. For example, if an exporting country had a law banning the importation of pornography, would such a law be a material nontariff trade barrier? Are value-added taxes material nontariff trade barriers?

Although not entirely clear, S. 1822 appears to prohibit the U.S. Trade Representative from certifying an exporting country that applies tariff barriers which are "inconsistent with tariff bindings entered into by the country of export with the United States." Presumably the "tariff bindings" referred to in S. 1822 involve primarily the GATT. For GATT inconsistencies, it would appear to be far more sensible to address violations within the terms of the GATT because sanctions could be directed against the exporting country in violation. Under the manufacturing restriction, the punitive provisions are solely directed against U.S. copyright holders.

6. Allows importation of 2000 copies but not public distribution. Under the present manufacturing restriction, subsection 601(b)(2) permits the importation of 2000 copies of a work which would otherwise violate the restriction and subsection 601(b)(6) permits the public distribution of those copies. S. 1822 continues the exemption allowing the importation of 2000 copies but eliminates the exemption specifically authorizing public distribution of those copies.

7. The effect of an importation violation on copyright validity is unclear. Subsection 601(d) of the present manufacturing restriction explicitly provides that importation or public distribution in violation of the restriction does not invalidate protection of the work. S. 1822 eliminates this explicit provision, making the effect of a manufacturing violation unclear. If it is intended that importation or public distribution in violation of the manufacturing restriction invalidates the copyright for the period of the violation, then a possible constitutional issue arises.^{41/} At a minimum, the

41. If copyright protection is invalidated, then the work is placed in the public domain. The reestablishment of protection through publication of an authorized edition would then remove the work from the public domain. The extent material can be removed from the public domain is a controversial and unclear constitutional issue. See, United Christian Scientists v. Christian Science Board of Directors, CCH Copr. L. Rptr. ¶25830 (D.C.D.C. 1985) (Private bill reestablishing copyright protection for the works of Mary Baker Eddy after their entry into the public domain found to be unconstitutional.)

bill should be amended to insert a "savings clause," specifying the rights of the public to use the works during the period of the violation and beyond, if, for example "unauthorized" derivative works are created. If S. 1822 does not intend to invalidate the copyright protection of the work, then why eliminate the explicit provision in the present law preserving copyright validity?

8. Prohibition applies to entire work rather than English language textual material. The present manufacturing restriction applies only to the "nondramatic literary material" contained in the work. It would not apply to dramatic, musical, pictorial, or foreign language material accompanying the English language text.

S. 1822 applies to the entire work, meaning that dramatic, musical, pictorial, or foreign language material accompanying English language text would fall within the restriction. In addition, S. 1822 eliminates the "preponderantly" test, so that works consisting primarily of pictorial, musical, or foreign language material would nevertheless fall within the restriction. In the case of collective works, inequities would likely result because authors of artistic, musical or foreign language contributions could lose effective copyright protection because of an English language contribution comprising an inconsequential portion of the work.

9. S. 1822 eliminates the requirement that importation or public distribution be authorized. The present manufacturing restriction applies only to authorized importation or public distribution in violation of the restriction. S. 1822 eliminates the requirement that the importation or public distribution be authorized. This change may allow the unauthorized activities by persons abroad to jeopardize the copyright protection of U.S. citizens in the United States. In addition, it theoretically raises the possibility of a collusive importation whereby an individual wishing to reproduce a work secretly arranges for the importation of a few copies for the express purpose of establishing a defense for his or her infringing activities.

10. S. 1822 violates the GATT. S. 1822 as proposed apparently violates the GATT for three reasons. It broadens the existing restriction from "preponderantly of nondramatic literary material in the English language" to "printed material that is in the English language." Second, the mandatory feature of the manufacturing restriction is eliminated in favor of a restriction subject to executive discretion. Third, the duration of the restriction is extended indefinitely.

The United States has always conceded that the manufacturing restriction is inconsistent with Articles XI and XIII of the GATT. The United States has justified continuation of the manufacturing restriction on the "existing legislation" provision of paragraph 1(b) of the Protocol of Provisional Application. The extension of the restriction to "printed material that is in the English language" apparently violates this "existing legislation" provision because it would extend the restriction to material not restricted on October 30, 1947.^{42/} The new material covered by the amended restriction would include dramatic works, musical works containing English language text, certain pictorial material,^{43/} and cartographic material containing English language text.

Another requirement of the "existing legislation" provision is that it be mandatory, leaving no discretion to the

42. In applying the "existing legislation" provision, the United States has assumed that modification of existing law which reduced the impact of a restriction was consistent with GATT. On the other hand, modifications which increase the scope of a restriction violate the GATT. S. 1822 clearly retracts many of the liberalizing features contained in the 1976 Copyright Act (such as the narrow subject matter scope and the Canadian exemption) and therefore likely violates the GATT on this ground. However, even if the more restrictive manufacturing provision in effect on October 20, 1947 is used for purposes of analysis, there are a number of areas outside the coverage of that restrictive provision which would be covered by S. 1822.

43. While the manufacturing clause in effect in 1947 did generally cover separate lithographs and photoengravings, certain prints were subject to an exception to the graphic arts clause (generally scientific works and reproductions of works of art). Under S. 1822, prints containing some English language text which would have been subject to the exception to the graphic arts clause would fall within the restriction.

executive agency responsible.^{44/} Obviously S. 1822 has been purposely fashioned to give the executive branch discretion in the certification process.

B. Permanent Extension Bills

The three other manufacturing clause bills (S. 1938; H.R. 3465; H.R. 3890) would simply extend the existing manufacturing clause permanently. As noted, this clause has been found to be a violation of the GATT, and its permanent extension might trigger retaliatory measures by United States trading partners. In addition, the permanent extension bills as well as S. 1822 appear to be incompatible with the Berne Convention; therefore, as we discuss in the next section, their enactment would apparently constitute an impediment to United States adherence to the Berne Convention.

III. COPYRIGHT OFFICE POSITION

In considering what to do about the manufacturing clause, the Copyright Office suggests that there are a number of questions to which the answers should prove valuable. They include:

1. Is not the copyright balance which is inherent in the constitutional mandate best viewed as a balance between the strength of the property right and the public's interest in broad dissemination? Should not trade inequities, when they exist, be addressed elsewhere in the U.S. Code?

2. Should certain U.S. copyright industries be discriminated against as compensation for the potential trade adjustment problems in other industries when those copyright industries have a strong positive trade balance?

3. Is there some way to analyze the probable effect of the expiration of the clause other than by "duelling studies?"

4. As the U.S. seeks to encourage other nations to modernize their copyright laws, in part to assist U.S. trade

44. Jackson, World Trade and the Law of GATT, §4.10 (1969).

interests, does it help to ratify or even strengthen a provision which threatens imminently to lead to trade sanctions against the U.S.?

5. Will the examination of the large questions surrounding possible U.S. adherence to the Berne Convention be foreclosed by perpetual extension of the clause?

While we do not have ready answers to all of these questions, we believe that they must be considered. I turn now to our position on the manufacturing clause in general and S. 1822 in particular.

The Copyright Office has consistently opposed retention of the manufacturing clause and this continues to be our position. While we have no claim to expertise in trade matters (and it should be obvious that the clause is a piece of trade legislation which just happens to be located in the copyright law), it seems clear from a copyright perspective that there is no necessary nexus between a desire on the part of the printing industry and its employees not to lose work to foreign competition and the clause's method of satisfying that desire by constraining the freedom of certain U.S. copyright owners to have the manufacturing of copies of their works performed at a site of their own choosing. The purpose of copyright is to create property in the products of the human mind and heart, so that authors may reap a reward proportional to the public's affection for their works. In considering the equities of copyright, the proper balance should be between proprietors and the public, in order that works may be created and disseminated and used to the fullest extent possible. While there may well be equities to be balanced in the trade arena between the principles of free trade and the legitimate needs of U.S. industries and their workers, we could find a better place to strike that balance than in the copyright law.

If the printing industry requires protection -- then such protection should lie elsewhere than in title 17 of the United States Code. If Congress determines that the printing industry deserves continued protection, then the Internal

Revenue Code or the tariff and trade laws would, we believe, be a more appropriate home for that protection. Apart from the clause, the intellectual property laws of the United States do not talk in terms of trade barriers.

The historic reasons for the clause's creation appear long since to have disappeared. Far from being an infant, the U.S. printing industry leads the world.^{45/} While the U.S. trade deficit is a matter of public record, it is also clear that the copyright industries do their part to reduce it.^{46/} It is thus hard to understand why some U.S. copyright industries -- and more of them under S. 1822 than under the present law -- should be singled out for discrimination when they in no way contribute to the deficit.

The printing industry contends that, but for the clause, the United States will lose substantially more than 100,000 jobs to foreign competition. And, if past is prologue, publishers will claim that in a world unfettered by the clause their behavior would be unchanged, i.e., no printing now done in this country would be done elsewhere. As you have stated before, Mr. Chairman, with respect to other predictions about copyright matters, the truth likely lies somewhere in between. But that is not to say one should fairly "split the difference." And there are sources to which to turn if one wishes to consider probable publisher behavior in a clause-free world.

Both before and after the extension of the termination date in 1982, several private and government examinations of the likely effects of termination were published. The two analyses which were performed by U.S. government agencies that had an understanding of the scope of copyright in general and the clause in particular estimated that the job loss, if any, to be realized upon expiration would be far smaller than that predicted by the printing industry. Prior to extension, the

45. ITC Report, supra, note 25, at 42 and 77.

46. See, e.g., the Copyright Office 1984 Report: The Size of the Copyright Industries, supra note 19. It states that copyright industry exports exceeded imports in 1977 by almost a two-to-one ratio.

Congressional Research Service estimated that 5000-9000 job opportunities might be jeopardized by termination. After extension, under a Congressional mandate to reexamine the question, the International Trade Commission's estimate was even smaller: 1400-6850 jobs. Without attempting to endorse any position in a likely repetition of the "battle of the numbers," I would like to state that the Copyright Office is unaware of changes in paper prices, wage rates, exchange rates, or publisher practices that would call these estimates into question.

In thinking about the post-clause world, one need not rely exclusively upon mathematical models of predicted human behavior. Because the present clause exempts works by foreign authors, works in foreign languages, and works which are not "literary," one may observe where publishers now have printing done with respect to works not covered by the present clause.

The Copyright Office has performed an informal survey of the stock of two Washington, D.C., area general-interest bookstores. From a random sample of 300 books, 25 were exempt from the present clause. Of those 25, one was manufactured in Spain, one in Italy, one in Japan, and one in the United Kingdom. The remaining 21, or 84% of the exempt sample, were manufactured in the United States. It probably bears noting that none of the exempt copies was manufactured in Canada, because that country, and its current total exemption from the clause, are likely to be prime subjects of the current debate about retaining or expanding the clause. Of the four works not manufactured in the United States, all were heavily illustrated, and three had foreign authors. Other works in which graphic authorship predominates, including Beretta's Automatic Pistols and an Illustrated Atlas of the World, were manufactured in the United States.

The results of the survey suggest that while publishers may underestimate the amount of printing work now protected by the clause that will go abroad if the clause is abolished, the scope of any future change may be rather small. It is clear from past examinations of the publishing industry

that the decision to award a printing contract for a specific book is both complex and independent of decisions concerning other books.^{47/} Thus the information available here with respect to books not covered by the present clause is probably a good proxy for how manufacturing sites would be distributed in a clause-free world.

If the informed estimates and informal surveys are wrong, however, and expiration of the clause were to prove detrimental to the printing industry, Congress might wish to consider something in the nature of a "trigger" mechanism to ensure that the post-clause world does not differ too greatly from the present. The law could, for example, provide for suspension rather than the termination of the present clause as of July 1, 1986, with such suspension to last so long as import penetration (whose measurement the Copyright Office leaves to experts elsewhere in government) remains below a statutorily set limit. If, under such a plan, the limit was quickly and consistently reached, then the clause, and its potential reactivation, could be judged to be an important protector of U.S. jobs. If, on the other hand, the mix of production sites did not significantly change, then one could ultimately conclude that the clause's effects are overestimated by its intended beneficiaries and that its termination would be relatively harmless.

Recent trade legislation such as the Caribbean Basin Initiative and the trade and Tariff Act of 1984 reflects the growing awareness of the relationship between trade matters and intellectual property. In a similar vein, you might consider enacting trade legislation to protect the printing industry from unfair foreign competition. This would have the advantage of locating this trade legislation in its natural home, and not muddying domestic or international copyright waters. Preliminary statutory language to accomplish that end will be provided with our oral testimony.

47. See generally, Copyright Office Report, supra note 1, and Appendix C thereto (hearing transcript).

In considering whether to extend and expand the clause, you may wish to consider how such an action might appear to conflict with recent legislative initiatives in international copyright. Through such enactments as the Caribbean Basin Initiative and the Trade and Tariff Act of 1984 the Congress has sought to link improved foreign treatment of U.S. copyrights and other intellectual property rights to U.S. trade policy. That is, trade relief for other nations is conditioned in part upon their improving their copyright treatment of U.S. works. On several occasions in the past year, representatives of the U.S. government have urged that copyright laws in the Republic of Korea, Taiwan, Malaysia, Singapore, Thailand, and Indonesia be "modernized." More than once, foreign copyright authorities have responded to such entreaties by asking whether a requirement of domestic manufacture would reasonably be part of such a law. The U.S. response has consistently been negative, and has referred to the impending expiration of the U.S. requirement. It is a fair question how the U.S. can seek to occupy whatever high moral ground may exist in such matters if it not only refuses to remove the clause as scheduled, but increases it dramatically as by enacting S. 1822.

The question whether to retain, enlarge, or terminate the clause also bears directly on some very important work which, I believe, this subcommittee has just begun. That is the difficult and far-reaching question whether the United States should adhere to the Berne Convention. At a hearing on this subject in May of 1985, the Acting Register of Copyrights, Donald Curran, noted that the present manufacturing clause was a formal and real impediment to U.S. adherence. It is, in Berne terms, a formality upon which enjoyment of copyright is conditioned.

As you know, Mr. Chairman, since that hearing, at which Berne adherence received broad support from a variety of witnesses, a great deal of work has been done by private copyright experts who have examined the extent to which U.S. law is or is not compatible with Berne. Without in any way

preempting their work, I would suggest that there is at least the strong possibility that enactment of S. 1822, as it now is written, would effectively squelch any discussion or debate concerning the merits of Berne or the steps to be taken in order to adhere. If the Congress deems consideration of Berne a major piece of copyright work for the near future, then certainly something on the order of the least drastic alternative -- a brief finite extension of the present law would be advisable.

In summary, then, the Copyright Office preferences would be:

1. Permit the clause to expire as scheduled.
2. Move protection from the copyright law to the trade law.
3. Suspend the clause as of the termination date subject to an import limit which, if reached, would cause the clause to be reimposed.
4. Enact an extension of the present clause for a term of years.

EXCERPT FROM THE COPYRIGHT OFFICE'S
1981 MANUFACTURING CLAUSE REPORT

APPENDIX I

VI. Recapitulation and Conclusion

After examining the record in this proceeding, the legislative history of the manufacturing clause, the economic data proffered by the parties, the laws and practices of other countries, and the CRS report, the Copyright Office has made the findings and reached the conclusions set out below. They are reproduced here in somewhat shorter form than in the body of the report, and are organized by the sections in which they first appear.

A. Legislative History.

1. Two arguments have been made for the clause throughout its history:

1) it is a reasonable limitation on copyright for the protection of book printers and manufacturers; and 2) but for its existence, much work now done here would be done abroad.

2. The concerns about foreign printers and publishers which caused the clause's advocates to urge its enactment and, generally thence, to oppose its periodic liberalization, have, thus far, not been borne out.

3. The parties disagree both over the extent to which the dispersal of advanced technology into "low-wage" nations has occurred and, to the extent that it has, over the size of the threat posed thereby.

B. Paper.

4. Among those nations often regarded as likely competitors for U.S. book manufacturing business in a "post-clause" world, Japan has the greatest capacity for producing high quality paper.

5. That capacity notwithstanding, Japan faces certain difficulties regarding paper supply. They include:

- a) significantly higher paper prices than in the U.S.;
- b) the need to import either pulpwood or finished paper from the U.S. or elsewhere;
- c) the need to expand the Japanese paper industry if importation of finished paper is to be avoided; and
- d) the absence of a strong paper industry in the countries where co-venturing by Japanese and local entrepreneurs might reasonably be expected to occur in order to take advantage of low wage structures.

6. The combination of a wealth of raw materials and a strong paper

manufacturing industry in this country likely will continue to give the U.S. an advantage over its potential competitors in book manufacturing.

C. Labor Costs.

7. Wage and total compensation rates in book manufacturing industries in much of the Far East are substantially lower than in the U.S.; those rates in Europe are equal to or higher than ours.

8. Labor intensity has declined in these industries during the 1970's in the United States. Such a decline tends to make the U.S. less vulnerable to foreign competition based on compensation differentials.

9. Labor productivity must be evaluated in determining whether "cheap" labor is truly a bargain. Since the U.S. still has the most productive labor force in the world, higher wages here may merely be a fair reflection of that fact, and not necessarily an incentive for manufacturers to seek cheaper, but less productive, workers.

D. Transportation Costs.

10. Books manufactured overseas cost at least somewhat more to deliver to markets in the U.S. than do domestically printed books, which may make their overall cost less attractive than if transportation costs are ignored.

11. The time consumed by ocean transport compares unfavorably with totally domestic shipment schedules. Since publishers desire close contact with their printers, rapid additional printings, and small inventories, this factor may be particularly significant.

E. Technology.

12. The last two decades' technological advances in book manufacturing have been felt in all parts of the industry, but have been especially important in pre-press and press operations.

13. The state of the art in the U.S. is equal to that in any country and superior to most.

14. The international dispersal of the manufacturing of the equipment used to manufacture books poses no insurmountable hardship for American book manufacturers.

15. The state of the art in many nations which might compete with us, in the absence of the manufacturing clause, is enough lower than ours that massive investments of time as well as money would be needed to permit their industries to do what ours does now. There is, further, no reason to assume that if they

do undertake to modernize their capital base that U.S. manufacturers will cease improving their plants and equipment.

F. Present Industry Health.

16. By the available measures of growth -- sales, employees, firms in the industry -- the book manufacturing industry in this country is healthy today and its recent performance matches or exceeds that of American industry in general.

17. How much of that health can fairly be attributed to the manufacturing clause is unclear. It appears that American publishers, in choosing manufacturers for works not governed by the manufacturing clause, frequently select domestic printers and binders.

G. The Impact of the Manufacturing Clause's Expiration.

18. Book manufacturers and printers, in part because they overestimate the number of jobs protected by the manufacturing clause, tend to overstate the likely effects of expiration with respect both to market and employment losses.

19. By two different modes of analysis, the Congressional Research Service reached its estimate of a 10-19% level of import penetration.

20. The growth in demand for books due to increased domestic demand and increased exports might result in no job losses at all, but, rather, a reduction in the rate of job growth.

H. The "Australian Experience".

21. The "Australian Experience" -- severe losses to their printers in the face of competition from certain Asian nations -- has little meaning for a "post-clause" United States. Among the marked differences between their industry then and ours now are their relative ages and maturity, their relative sizes, the traditional level of imports in the book markets for whom they do their work, their locations vis-a-vis the Far East, and their access to cheap and plentiful raw material. In each case, the U.S. enjoys a more favorable position from the standpoint of having incentives to keep book production at home.

I. Canada and the "Toronto Agreement".

22. The parties to the Toronto Agreement have lived up to their bargains by petitioning their governments as they undertook to do.

23. Although the Canadian government has not yet adhered to the Florence Agreement, it has made several positive steps in the direction

outlined in the Toronto Agreement, including the reduction to zero of the duty imposed on books imported from the U.S.

24. The expiration of the manufacturing clause may make that reduction permanent and permit Canada to take other positive steps to remove potential trade barriers with the U.S.

J. Other Issues.

25. The Copyright Law is an inappropriate home for barriers to free trade.

26. The manufacturing clause's discriminatory provisions are strong arguments against its retention, whether or not they amount to constitutional infirmities.

27. Typesetting and composing, not governed by the manufacturing clause, should be little affected by its expiration.

28. Expiration is a small but significant step toward the deregulation of the marketplace.

29. Foreign publishers, in a break with the past, now do print some works here for distribution abroad.

30. The existence of a Royal Patent on the King James Version of the Bible is not a fair basis for retaining the manufacturing clause.

K. Alternatives to the Manufacturing Clause.

31. Expiration does not foreclose other forms of protection for the American book manufacturing industry.

32. Tax credits could be provided by Congress so as to treat book publishers as motion picture producers are now treated.

33. The Florence Agreement, by virtue of our reservation thereto, does not limit the power of the International Trade Commission to impose duties, quotas and the like with respect to books.

34. Relief should be given only if harm is provable rather than possible.

L. International Considerations.

35. Alone among major book publishing and manufacturing countries, the U.S. controls international commerce in books by limiting the freedom of choice of some of its copyright owners.

36. The means used by other nations to exert control — duties, quotas, licenses, exchange restrictions, and the like — amount to costs to be considered but not outright bars to foreign manufacture.

37. Various means — both in and out of copyright systems — for protecting domestic editions are very different from our manufacturing clause:

- a) they do not tell publishers where to have their works printed, and
- b) their breach never results in a loss of copyright rights.

The conclusion to which these findings lead seems clear: the manufacturing clause, whatever its historical justification, is not, in 1981, a necessary or proper part of the Copyright Law. No evidence is present in the record which suggests that circumstances have changed since 1976 so that Congress should withdraw from its conclusion reached in that year: that the manufacturing clause should expire on July 1, 1982. If, after that date, economic harm should befall book manufacturers due to increased imports, mechanisms are now available to protect their interests without restricting the freedom of choice of American copyright owners.

ITC MANUFACTURING CLAUSE REPORT

APPENDIX II

EXECUTIVE SUMMARY

The domestic manufacturing requirements embodied in the manufacturing clause were first established in U.S. copyright law in 1891 as a means of protecting the U.S. printing industry from foreign competition. The law provided that U.S. copyright protection would be given only to works for which typesetting, printing, and binding were done in the United States. Since 1891, the restrictive nature of the manufacturing requirements has generally been reduced. The current manufacturing clause, which is a part of the Copyright Act of 1976, requires, with certain exceptions, that copies of works (1) preponderantly of nondramatic literary material, (2) in the English language, (3) by U.S. citizens or domiciliaries, and (4) of copyrightable material be manufactured in the United States or Canada in order to obtain U.S. copyright protection. The coverage of the current manufacturing clause does not extend to such material as dramatic, musical, or multilingual works. Any creation "fixed in a tangible medium of expression" may be protected by copyright, but copyright owners lose that protection if they violate the manufacturing clause.

In recent years the possibility of eliminating the manufacturing clause has been much studied and discussed. It has been the subject of congressional inquiries, and several private and public studies have been completed regarding the ramifications of such an action. Those who oppose the termination of the manufacturing clause argue that its elimination could result in the loss of U.S. jobs and the transfer of business to foreign printers and binders. Those who favor termination maintain that it does little to protect U.S. jobs or to enhance the competitive position of U.S. publishers, printers, and binders. They point out that the United States is the only major book producer in the world that restricts its book trade through a manufacturing clause embodied in a copyright law. This, they argue, is contrary to our obligations under the General Agreement on Tariffs and Trade (GATT). ^{1/}

The major findings of this study are as follows.

The printing and publishing industry is one of the 10 largest industries in the U.S. manufacturing sector.

The U.S. printing and publishing industry had estimated shipments of \$82.5 billion in 1982; it consists of some 50,000 individual establishments, located in almost every county of every State. The industry employs more than 1.3 million persons and has an annual payroll estimated to exceed \$20 billion.

The industry comprises three primary groups—commercial publishing and printing, book publishing, and book manufacturing. Commercial publishing and printing shipments amounted to \$72.7 billion in 1982, or 88 percent of total

^{1/} During the Multilateral Trade Negotiations (MTN), the European Community (EC) suggested that the subject of the manufacturing clause be added to the non-tariff barrier negotiations, but did not pursue the matter after U.S. officials assured it that the clause was scheduled to be eliminated on July 1, 1982.

The EC considers the congressional extension of the clause to July 1, 1986, to be contrary to the understandings reached between the United States and the EC during the MTN. It maintains that the extension has upset the balance of concessions reached during those negotiations. At the request of the EC, two rounds of consultations were held in late 1982 and early 1983 under arts. XXII and XXIII of the GATT. During these consultations, the EC estimated that it was due \$250 million in compensation owing to the extension of the clause, but the United States maintained that the amount was \$7 million. Thus no agreement on compensation was reached.

On Apr. 20, 1983, the EC asked the GATT Council to establish a panel to determine the appropriate level of compensation due the EC. The panel proceedings may take 6 to 8 months, during which time the EC and the United States will have two opportunities to present information to the panel.

printing and publishing shipments in that year. Book-publishing sales in 1982 amounted to \$7.2 billion, or 9 percent of total printing and publishing shipments. Book-manufacturing shipments amounted to \$2.6 billion, or 3 percent of the total.

World production and trade in printed matter is highly concentrated in the developed countries.

The United States, Japan, the United Kingdom, West Germany, France, and Italy account for about 60 percent of world production of printed matter, estimated at \$200 billion in 1981.

In general, trade in this item has occurred between the developed countries of North America and Europe. Of total world exports of printed matter of \$7.5 billion in 1981, the United States and West Germany each had exports worth \$1.3 billion (each accounting for 17 percent of the total); the United Kingdom, \$0.9 billion (12 percent); France, \$0.8 billion (10 percent); and Italy, \$0.5 billion (6 percent). The top 10 exporting countries in 1981, all developed nations, accounted for nearly 85 percent of world exports. The United States is the only one which showed a significant gain in world market share during 1977-81. The leading importers were Canada, at \$839 million (12 percent of the total), France, at \$823 million (12 percent), and the United States, at \$645 million (10 percent).

The study revealed no indication of major expansion of printing capacity or penetration of world markets for printed matter by the low-cost producers of the Pacific Basin.

There have been no significant increases in the shares of world imports of printing and bookbinding machinery by countries in the Pacific Basin which would be indicative of increased capacity to produce and export printed matter. Although world imports of printing and bookbinding machinery increased from \$1.9 billion in 1977 to \$3.7 billion in 1980, the share of the market accounted for by Japan remained constant at 4 percent, and the shares accounted for by Hong Kong, the Republic of Korea, Taiwan, and Singapore each remained at about 1 percent or less.

The share of world exports of printed matter accounted for by Pacific Basin countries rose during 1977-81, from 5 percent to 6 percent. Japan's share of exports alone accounted for roughly 50 percent of this increase, rising from 2.6 percent in 1977 to 3.1 percent in 1981. The combined share of other Pacific Basin countries, all developing nations, rose slightly, remaining at about 3 percent. Total exports by the Pacific Basin countries between 1977 and 1981 increased by 80 percent. This was greater than the growth in total world exports (about 58 percent) but less than the growth in U.S. exports (over 90 percent).

The U.S. printing and publishing industry is generally competitive with the industries in all other world producers of printed matter in terms of production factor costs, with the exception of labor costs.

Plant costs, the costs of preparing a written work for printing, represent roughly 10 to 20 percent of manufacturing costs of an average book and include such activities as typesetting, stripping, and platemaking. The U.S. industry is recognized as a leader in the utilization of the most advanced and cost-efficient technology in this area (including computer-assisted composing equipment), which has reduced the required level of labor skills and attendant costs substantially.

Printing paper and cover materials made in the United States are widely agreed to be competitive in cost and quality with such materials produced anywhere else in the world. Printing paper generally accounts for 30 to 60 percent of book-manufacturing costs.

The technology and machinery used in printing and binding operations are fully transferable from one country to another. The United States is the world's leading producer of this type of equipment, and the U.S. printing and publishing industry has ready access to the most advanced and efficient equipment. Plant costs as a proportion of total book manufacturing costs are relatively small.

The labor costs of U.S. book manufacturers are those most likely to exceed foreign levels. European and Japanese compensation rates in the printing and publishing industry are 50 to 90 percent of U.S. compensation rates. Comparable rates in Hong Kong and Singapore are about 15 percent of U.S. wages. The direct labor costs involved in printing a book in the United States amount to 12 to 19 percent of total book-manufacturing costs.

The competitive advantage in labor costs enjoyed by Far Eastern manufacturers of printed matter are, for the average book, negated in the U.S. marketplace by transoceanic transportation and communication costs.

Transoceanic freight costs for shipping books from Far Eastern countries to the United States were found to range from 15 cents to 30 cents per book; thus, for an average book with the total manufacturing cost of \$1 in 1981, the shipping costs would negate the savings from the lower wage costs of printing overseas. Indeed, the shipping costs generally exceed total U.S. labor costs of 12 to 19 cents per book.

The great distance between Far Eastern manufacturers and the U.S. marketplace also constitutes a partial communications barrier for many book markets and, hence, an added cost. Personnel travel and telecommunications expenses are examples of direct costs. Less direct costs include those associated with the decreased flexibility, turnaround time, and quality control resulting from the great distances between publisher and printer.

Information gathered in the study indicates that the impact of the termination of the manufacturing clause on U.S. production and trade in printed matter would be relatively minor in terms of industry totals and would be concentrated in the book-manufacturing segment of the industry.

Books.--If the manufacturing clause were to be withdrawn, it is estimated that from 2 to 10 percent of the books that are currently printed in the United States would be printed abroad and imported; on the basis of 1982 sales, this equates to an estimated sales loss for the U.S. industry of \$30 million to \$260 million.

The major factors affecting the publisher's decision as to where to produce books are printing costs and publisher timing requirements. As stated above, the principal difference in printing costs in various countries is wages. Thus, the low wages in such countries as Hong Kong and Singapore is the primary advantage of overseas printing. However, because overseas transportation and communications costs tend to offset these labor cost advantages, only those books with higher than average labor costs would be printed overseas if the manufacturing clause should be terminated. Labor costs are the highest in short-run books with sewn bindings. Extensive color work also raises labor costs. College textbooks, professional books, and certain subscription reference books are examples of books with high labor costs. It is these books which make up 2 to 10 percent of the U.S. market.

U.S. book publishers would continue to perform certain tasks (e.g., editorial, sales, and distribution functions) in the United States even if the printing were done overseas due to their need to be in close proximity to the creators of the written materials and the U. S. marketplace. Thus, there would be no significant loss of publishing activities in the United States should the manufacturing clause be terminated.

U.S. exports of books and all other types of printed matter were not found to be directly affected by the existence of the manufacturing clause and hence would not be affected by its termination. The United States was the leading exporter of printed matter in 1981 and ranked high in all the major segments of this trade--first in books and pamphlets, second in newspapers and periodicals, and third in all other printed matter. The levels of U.S. exports reflect not the existence of the manufacturing clause, but rather the popularity of U.S. publishing houses and titles, the state-of-the-art quality and versatility of the U.S. printing industry, and the overall price competitiveness of the U.S. industry.

Newspapers and periodicals.--It is estimated that no measurable amount of domestically produced newspapers and periodicals would be printed overseas and imported should the manufacturing clause be terminated. Timeliness is a

primary consideration regarding newspaper and periodical printing. Even for those few periodicals printed bimonthly or quarterly, for which timing is less important, it is estimated that the risks of printing abroad (such as strikes, difficulties in customs clearance, or printing errors by a foreign printer) are so great that no such overseas printing would be done. Because so few issues of such publications are printed annually, such risks could cause the loss of considerable revenue.

Catalogs and directories.—It is estimated that no measurable share of the domestically produced catalogs and directories would be printed overseas should the manufacturing clause be terminated. Most catalogs are predominantly pictorial and could be printed overseas regardless of the manufacturing clause. The fact that they are not is indicative of the lack of advantage in overseas printing. The largest class of directories is telephone directories, for which there is no significant economic benefit derived from copyright protection (nearly all copies are given away). These directories could be printed abroad if it were advantageous to do so. For directories other than telephone directories, the cost of printing involves the same cost elements as book printing. Hence, there appears to be economic incentive to print only those directories with high labor cost characteristics overseas. Such directories are believed to account for a negligible share of the U.S. output of directories.

Miscellaneous printed matter.—It is estimated that no significant part of domestically produced miscellaneous printed matter would be printed overseas should the manufacturing clause be withdrawn. Many of the products are not preponderantly literary, and others (e.g., manifold business forms) are generally printed without copyright claim; these products could be printed overseas without regard to the restrictions of the manufacturing clause. For such printed matter as legal and financial items, timing requirements generally necessitate local printing.

The costs of printing miscellaneous printed articles generally involve the same elements as book printing (e.g., plant, paper, labor, and transportation). The lack of significant foreign cost advantage is clearly indicated by the fact that domestic production currently supplies virtually all the consumption of the many types of printed matter that could be printed overseas regardless of the manufacturing clause. In 1982, imports supplied only \$356 million, or 0.5 percent of U.S. consumption of miscellaneous printed matter. Thus, the termination of the manufacturing clause would probably have no appreciable effect on imports of miscellaneous printed matter.

The displacement of U.S. production of printed matter by imports as a result of the termination of the manufacturing clause would result in the loss of 1,400 to 6,850 employment opportunities in the U.S. economy.

The loss of employment opportunities in the book-manufacturing segment of the U.S. printing and publishing industry is a direct reflection of the above-estimated loss of U.S. production of high-cost books to foreign manufacturers. It was derived from the U.S. Bureau of Labor Statistics input-output model of the U.S. economy. The employment opportunity loss would be distributed within the U.S. economy as follows: book-printing industry (39 percent or 550 to 2,650 jobs), other printing-related industries such as binding (13 percent or 180 to 880 jobs), paper products industry (5 percent or 75 to 370 jobs), and all other sectors (43 percent or 600 to 2,950 jobs).

It is estimated that the long-term effect of expiration of the manufacturing clause on conditions of competition between U.S. and foreign firms engaged in printing and related activities would be generally insignificant.

The major worldwide trend in printing is the substitution of computer-oriented and other labor-saving technology for labor-intensive technology. This trend has been underway since the 1960's and will continue whether or not the manufacturing clause is terminated. High-wage-rate countries, such as the United States, have been in the forefront of the development, adoption, and marketing of labor-saving technology. In the future, it is expected that firms in high-wage-rate countries will continue to have the most reason to adopt such technology.

DRAFT BILL

[To be located in title 19]

Sec. 101 SHORT TITLE

This title may be cited as the "Printed Matter Protection Act."

Sec. 102 PURPOSE

The Congress finds that certain sectors of the United States printing industry will face potentially unfair foreign competition after the expiration of the "manufacturing clause" of the copyright law (17 U.S.C. section 601) on July 1, 1986. The purpose of this act is to ensure that competition for the printing and manufacturing of copies of works formerly covered by that clause comes exclusively from nations that are certified by the United States Trade Representative as offering a satisfactory level of copyright protection to U.S. works and either impose no barriers to trade in such copies or have in force a free trade agreement with the United States.

Sec. 103 IMPORTATION RESTRICTED

Except as provided in section 105 of this act, all persons are prohibited from importing into the United States from any country copies of a copyrighted work consisting preponderantly of nondramatic literary material that is in the English language, unless such copies shall have been manufactured in a country certified as an authorized location of manufacture accordance with section 104 of this act. All copies whose importation is hereby prohibited shall be subject to seizure and forfeiture.

Sec. 104 CERTIFICATION AUTHORITY

The United States Trade Representative shall certify those countries, if any, that are authorized locations of manufacture under this act. To be an authorized location of manufacture a country shall be certified as providing adequate and effective copyright protection to U.S. authors, either via a multilateral convention to which the United States adheres or by the existence of a bilateral copyright relationship as set out in section 104(b) of title 17; and either

(a) the United States Trade Representative has certified that the country currently imposes no material nontariff barriers and, to the extent inconsistent with tariff bindings entered into by that country with the United States, imposes no tariff barriers to trade in the copies subject to this act; or

(b) the country currently has in force a free trade agreement with the United States governing trade in such copies entered into pursuant to section 401 of the Trade and Tariff Act of 1984.

Sec. 105 EXCEPTIONS

The provisions of this act do not apply --

(a) where on the date when importation is sought the author of any substantial part of the copyrighted work contained in such copies is neither a national nor a domiciliary of the United

States or, if such author is a national of the United States, he has been domiciled outside the United States for a continuous period of at least one year immediately preceding that date; if the copyrighted work is a work made for hire, the exemption provided by this clause does not apply unless a substantial part of the work was prepared for an employer or other person who is not a national or domiciliary of the United States or a domestic corporation or enterprise;

(b) where the United States Customs Service is presented with an import statement issued under the seal of the Copyright Office, in which case a total of no more than two thousand copies of any one such work shall be allowed entry; the import statement shall be issued upon request to the copyright owner or to a person designated by such owner at the time of registration for the work under section 408 or at any time thereafter;

(c) where importation is sought under the authority or for the use, other than in schools, of the Government of the United States or of any State or political subdivision of a State;

(d) where importation, for use and not for sale, is sought

--

(1) by any person with respect to no more than one copy of any work at any one time;

(2) by any person arriving from outside the United States, with respect to copies forming part of such person's personal baggage; or

(3) by an organization operated for scholarly, educational, or religious purposes and not for private gain, with respect to copies intended to form part of its library;

(e) where the copies are reproduced in raised characters for the use of the blind;

(f) where, on the date when importation is sought --

(1) the author of any substantial part of such material is an individual and receives compensation for the transfer or license of the right to distribute the work in the United States; and

(2) the first publication of the work has previously taken place outside the United States under a transfer or license granted by such author to a transferee or licensee who was not a national or domiciliary of the United States or a domestic corporation or enterprise; and

(3) there has been no publication of an authorized edition of the work of which the copies were manufactured in the United States; and

(4) the copies were reproduced under a transfer or license granted by such author or by the transferee or licensee of the right of first publication as mentioned in subclause (2), and the transferee or the licensee of the right of reproduction was not a national or domiciliary of the United States or a domestic corporation or enterprise; or

(g) where importation is sought for works described in, and in accordance with the requirements of, Article II, paragraph 1, of the Agreement on the Importation of Educational, Scientific, and Cultural Materials (the Florence Agreement) or Article IV, paragraph 5, of the Protocol thereto (the Nairobi Protocol).

Sec. 106 EFFECTIVE DATE

This act shall be effective July 1, 1986.

The Register

February 24, 1986



The Honorable
Charles McC. Mathias
United States Senate
Subcommittee on Patents,
Copyrights & Trademarks
137 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Mathias:

Thank you for the opportunity to appear before the Subcommittee on Patents, Copyrights & Trademarks. I have attached the Copyright Office responses to the questions included in your letter of January 27th.

As you suggested, I have collaborated with some of the other government witnesses in fashioning my responses. Nevertheless, I take full responsibility for my answers. If I may be of any further assistance, please let me know.

With best wishes,

Sincerely,


Ralph G. Gran
Register of Copyrights

RO/mvp

Attachment

RESPONSES FROM THE COPYRIGHT OFFICE TO ADDITIONAL QUESTIONS SUBMITTED BY SENATOR MATHIAS

1. In its 1981 report, the Copyright Office found that the concerns of proponents of the manufacturing clause, and of opponents of its liberalization, about the damage from imports, "have, thus far, not been borne out." Has the picture changed in the last 5 years? Is there any new evidence that we should bear in mind in evaluating the arguments in support of the legislation before us?

1. The limited data available to the Copyright Office suggest that not much has changed since the 1981 report. A second informal survey of the manufacturing locations of "exempt" works, i.e., those over which the clause now exercises no control, selected at random from Washington, D.C., bookstores, yielded results rather similar to the first. In both, the overwhelming majority of works which could be printed anywhere in the world with no constraints other than the publisher's business judgment, are printed in the United States. It may be worth noting that many of the exempt works are of the heavily illustrated type in whose production a variety of other nations are said to possess a comparative advantage over the United States. If the clause expires, one might reasonably expect that an even smaller portion of the English language textual works will be sent abroad, since it is precisely in that market that U.S. printers are strongest, both technologically and geographically.

2. One problem with S. 1822, as you discussed in your testimony, is the uncertainty it may inspire in the publishing and printing business. Since certification by the USTR that a given country is exempt from the manufacturing clause may be pending at any given time, and since the certification may be withdrawn as well as granted, it may be difficult to plan printing projects with sufficient certainty about whether the resulting work will enjoy copyright protection in the U.S. This unpredictability may result even if the standards for certification are more definite than they are in the bill as currently drafted. Do you agree that this may be a result of S. 1822? If so, what will this uncertainty do to the incentive to create and publish that copyright provides? How is it likely to affect the stability and profitability of the printing and publishing industries?

2. It seems clear that enactment of anything on the order of S. 1822, if it contains a certification process, will add to the uncertainty facing a publisher as he thinks about whether and how to publish any work. Assuming publishing decisions are not completely unlike other business decisions, additional uncertainty will likely lead, ultimately, to the publication of fewer books than in a world where certainty is available. On the other hand, since there is now complete certainty that there is no manufacturing clause penalty imposed on copies printed in the United States, and that certainty would remain after a certification provision became law, it could be argued that that certainty will remain, and merely be supplemented by potential foreign sites about which there is uncertainty. The effect, of course, would reasonably be to encourage publishers to keep printing work in the United States, unless, for example, certification should last for a term of years during which business planning could be performed.

If the Congressional Research Service and the International Trade Commission are right, and the expiration of the clause is an event of little consequence, then the printing and publishing industries should be little changed by expiration or retention of the clause. Their profitability probably depends much more on such variables as business acumen, the internal revenue code, and the business cycle.

If, however, expansion to cover all printed matter should occur, then, as suggested by Mr. Stewart, some U.S. publishers might go out of business altogether. Should the EEC follow through on its expressed intent to retaliate as authorized by the panel decision of the GATT, of course, these or other industries might be harmed.

3. As you point out, under S. 1822, copyright protection may be limited even if a work is imported into the U.S. without the authority of the copyright claimant. Is there any precedent in the copyright law for this loss of protection by action entirely beyond the control of the claimant?

3. No. Even under the pre-1978 manufacturing clause, violation of which could cause complete forfeiture of copyright, it was understood that such violation had to be performed or authorized by the copyright owner if forfeiture was to occur. Likewise, all problems raised under the previous copyright law when a work was published without a copyright notice arose only when such publication was authorized by the copyright owner.

4. You note that the manufacturing clause is an impediment to U.S. adherence to the Berne Convention. But, as the printers point out, it is not the only such impediment. Why do you think that extension of the manufacturing clause now would have particularly dire consequences for the movement toward Berne?

4. While the manufacturing clause is not the only impediment to U.S. adherence to Berne, it is a particularly important one in practical terms because it has a negative impact on business interests in a large number of Berne countries, some of whom brought the action before the GATT to seek retaliation for the 1982 extension of the termination date.

5. S. 1822 would greatly expand the class of works covered by the manufacturing clause, to include all printed material in English. As you note, this would probably include maps, sheet music, and works

predominantly in a foreign language, so long as they included any material in the English language. Let me ask about a couple of other possibilities suggested by this sweeping language.

Would advertising material, which is at least partly in English, be covered by the manufacturing clause, if S. 1822 becomes law?

Would this include objects like matchbooks, imprinted t-shirts, bumper stickers, and the like, if imprinted with English words?

What about record album jackets, or posters for films, with words in English?

5. It is quite possible that S.1822, if enacted without change, would extend the manufacturing clause's coverage to all of these items. There is no language in S.1822 to the contrary, and the phrase "printed material" is undefined in the bill.

6. Your testimony also notes that S. 1822 would remove copyright protection for the entire work, not just those proportions consisting of English language text. That means that the music accompanying English lyrics, or the illustration with an English caption, could be copied with impunity. Would the same be true of the sound recording with an English language label or album jacket? or of the computer program, fixed in a semiconductor chip, with an English language copyright or mask work notice engraved in the silicon? Is it clear what constitutes the "entire work" in this situation? Could it be that any work by an American author that includes a copyright notice or other markings in English would lose protection if not manufactured in the United States or another qualifying country? If so, how would you characterize the impact of S. 1822 on established copyright principles?

6. Since sound recordings are not "printed material," the clause as extended by S.1822 would not appear to cover them. The semiconductor chip embodying a copyrighted work would likewise appear to escape the effect of the clause. The absence of a definition for the term "entire work" means that here, too, there is room for confusion, but no one has to date suggested that the affixation of an English-language notice, without more, would subject the work bearing that notice to the manufacturing clause. If that should be the case, then literally all copyrighted works of U.S. authors would be subject to the clause.

7. Because S. 1822 would bring under the manufacturing clause a great deal of material -- for example, advertising material, maps, sheet music -- not now covered, its enactment could have a major impact on other copyright-related industries besides book publishing. Its repercussions could be felt in Silicon Valley, on Madison Avenue, and on Tin Pan Alley, and elsewhere as well. Has there been any assessment of the impact of this legislation on employment, profitability and growth in these affected industries, and on the effect on consumers of the products of these industries?

7. No. Because of the unclear scope of the clause that would be created by S.1822, no attempt of which the Copyright Office is aware has been made to quantify the effects of such a clause. If such work were performed, it should take into account the effects not only of such a clause but also of likely EEC retaliation against a thus-far-unnamed sector of U.S. industry.

8. Under S. 1822, the USTR would be required to certify whether or not a country granted adequate and effective copyright protection, and had dismantled nontariff trade barriers in printed materials. How would the U.S. rate on those scales?

8. In general terms, it is indisputable that the U.S. offers protection to eligible foreign works which is "adequate" and "effective." U.S. law contains at least the full complement of exclusive rights found in modern copyright laws. Duration of copyrights under U.S. law also exceeds that required by the U.C.C. provisions on duration. U.S. law exemptions, although unique in some cases, are in accord with international norms and do not permit large scale uncompensated commercial uses.

The U.S. court system is impartial, widely accessible, and able to provide significant legal and equitable relief to injured copyright owners. The Justice Department seeks and obtains criminal penalties against some of the most flagrant copyright infringers.

Some observers might argue that the formalities provided for under U.S. law are a hindrance to the enforcement of foreign copyrights here, but, as a practical matter, the minimal formalities permitted by the U.C.C. in respect of foreign works have created no particular problems with respect to the enforcement of copyrights in foreign works.

While the Copyright Office claims no particular trade expertise, it is conceded by those in government who have such expertise that the clause is a substantial nontariff barrier to trade in books.

9. Wouldn't the existence of a manufacturing clause, conditioning copyright for domestic authors on domestic manufacture of the work, constitute a nontariff trade barrier for any country that maintained it?

Wouldn't the existence of a manufacturing clause, denying copyright to domestic authors whose works were not manufactured domestically, cast some doubt on a country's claim to offer adequate and effective copyright protection?

9. As previously stated, the clause is a nontariff barrier and, as long as it is maintained, it provides a readily observable model for developing and newly industrializing countries to consider including in their copyright laws. In addition, they might choose to model their clauses not on the present U.S. law, whose impact is borne exclusively by domestic authors, but on the original, 1890 model, which flatly conditioned copyright in all books, in any language, written by authors of any nationality, on domestic manufacture.

The maintenance of the clause need not cast doubt on a country's claim to offer adequate and effective copyright protection because the phrase "adequate and effective," drawn from the U.C.C., was placed in that treaty at a time when the U.S. manufacturing clause was substantially harsher than it now is, and the U.S. law was believed to comport with that standard. In addition, the phrase is designed to measure, if somewhat imprecisely, a state's treatment of foreign works. How a state treats its own works does not bear on whether it offers adequate and effective protection to the works of foreign authors. Both the present U.S. clause, and the clause to which this question refers, are consistent with a nation's obligations under the U.C.C. and do not affect the answer to the question whether the protection offered foreign works is adequate and effective.

10. The phrase "adequate and effective" is the term used in the Universal Copyright Convention. Would adherence to the UCC be enough to establish this prong of the USTR certification? Or would adherence to the Berne Convention be required?

10. While the United States Trade Representative would bear the ultimate responsibility for certifying foreign copyright protection, it is reasonable to believe that he would rely in part on the advice of other government agencies in making that determination. Unless Congress were to specify a more specific test, the Copyright Office believes that USTR should look at, *inter alia*, an applicant state's domestic law, treaty adherence, and effectiveness of copyright enforcement. Adherence to Berne would presumably not be required.

11. One justification offered for expanding the manufacturing clause to all printed material is the alleged difficulty experienced by Customs in applying the existing test of "preponderantly non-dramatic material in the English language." Are you aware of any major administrative difficulties that have been encountered on this score? Does the case law under the existing manufacturing clause suggest that this standard has been difficult to apply, or that such difficulties persist today?

11. No. The Customs Service has reported no particular difficulty and the one case construing the application of the clause, Stonehill Communications,

Inc. v. Martuge, 512 F.Supp. 349 (S.D.N.Y. 1981), probably reduced some ambiguity with respect to its scope.

12. We all know that a lot of the impetus for extending the manufacturing clause comes from concerns over Canadian treatment of both U.S. copyright materials and the tariff and nontariff barriers on our printed products. In fact, this subcommittee held a hearing in the last Congress on copyright controversies with Canada.

Are there new developments on the copyright from within Canada that the subcommittee should be aware of? In particular, has there been progress on the problem of unauthorized rebroadcast of U.S. television programming?

12. Canada has long been considering revising its decades-old copyright law. The recent report of a parliamentary subcommittee, "A Charter of Rights for Creators," has recommended compensation for the rebroadcasting of television signals, including those of U.S. origin. Other areas of importance in which the report offers the possibility of improved treatment for U.S. works include off-air taping, rental rights, and protection for computer software.

Senator MATHIAS. Thank you very much, Mr. Oman.
Commissioner?

STATEMENT OF DONALD J. QUIGG

Mr. QUIGG. Thank you, Mr. Chairman. I welcome this opportunity to appear before you today to testify with respect to S. 1822 and S. 1938.

The manufacturing clause is an anachronism for which there is no justification, economic or otherwise. It provides little, if any, employment benefits to the U.S. printing and binding industry, and even those benefits would be only temporary, while depriving authors of the opportunity to make decisions that would be of great benefit to them.

The cost of printing plays but a small role in the decision to manufacture overseas. Materials, especially paper, constitute a major part of printing costs and they cannot be obtained more cheaply abroad.

Longer time delays and difficulties in communicating with overseas printers largely preclude the overseas printing of materials that are time-sensitive. Thus, the termination of the manufacturing clause is unlikely to cause newspapers or periodicals or even topical books and reprints to be printed overseas.

Even for nondramatic literary works, the additional transportation costs alone outweigh possible savings in labor available from low-wage countries.

The U.S. book printing industry has achieved dramatic increases in productivity and it continues to be highly competitive. Employment in the industry has been stable and industry sales are healthy. Thus, there is no justification whatsoever for not permitting the clause to expire. Renewing the clause only perpetuates this onerous trade barrier that continues to be a nuisance to U.S. authors and publishers and a source of embarrassment to our trade posture.

The manufacturing clause as presently constituted, or as it would be changed by either of the bills before you today, is a major impediment to U.S. adherence to the Berne Convention that you,

Mr. Chairman, have characterized as "the premier international copyright convention."

Adherence to that convention is an objective endorsed by President Reagan. One of the key principles of that convention is its prohibition against imposing formalities that impede the existence and enjoyment of copyright rights in its member states.

Making the manufacturing clause permanent would open the door to retaliatory measures by our major trading partners who are parties to the Berne Convention. S. 1822 is a more significant step backward from a position of leadership in international intellectual property than S. 1938.

At a time when we should be looking forward to the expiration of the clause, S. 1822 would broaden its coverage and dramatically alter its operation. Moreover, it imposes reciprocity in printed products trade. This is likely to encourage other industries to seek similar legislation, and this would seriously undermine our international trade posture.

The manufacturing clause has been found to be inconsistent with our GATT obligations. The likely result of continuing the clause will be the withdrawal of concessions granted to the United States by countries that are concerned about import competition from the United States and a general deterioration of our relationships with our trading partners.

This clause was extended 4 years ago over the President's veto. It should now be allowed to expire in July 1986, as scheduled. We can find no legal or economic justification for retaining it, nor have the proponents of this legislation demonstrated a true need for its retention, let alone the expansion proposed in S. 1822.

This concludes my testimony, Mr. Chairman.

[Mr. Quigg's submissions for the record follow:]

PREPARED STATEMENT OF DONALD J. QUIGG

ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS AND TRADEMARKS

SUMMARY

Mr. Chairman and Members of the Subcommittee:

I welcome the opportunity to appear before you today to testify on S. 1822 and S. 1938, both of which would make the manufacturing clause a permanent part of our copyright law. This clause forces authors who are U.S. nationals or domiciliaries to have their books and certain other printed material manufactured in the United States or Canada if they want full copyright protection. If the works are manufactured elsewhere and imported into the United States, they may be seized, forfeited, and, under certain conditions, reproduced without fear of liability for copyright infringement.

The manufacturing clause is bad intellectual property law and policy; it is a barrier to our membership in the Berne Convention for the Protection of Literary and Artistic Works; it has been found to violate our obligations under the General Agreement on Tariffs and Trade (GATT); and it cannot be justified on economic grounds. We believe that its proponents have failed to justify its permanent retention as proposed in S. 1938, let alone its expansion and permanent retention as proposed in S. 1822.

This clause was extended four years ago over a Presidential veto. It should now be allowed to expire in July 1986, as scheduled. We can find no legal or economic justification for retaining it, nor have the proponents of this legislation demonstrated any true need for its retention.

* * *

I welcome the opportunity to appear before you today to testify on S. 1822 and S. 1938, both of which would make the manufacturing clause a permanent part of our copyright law. This clause forces authors who are U.S. nationals or domiciliaries to have their books and certain other printed material manufactured in the United States or Canada if they want full copyright protection. If the works are manufactured elsewhere and imported into the United States, they may be seized, forfeited, and, under certain conditions, reproduced without fear of liability for copyright infringement. The Administration strongly opposes these bills.

Succinctly put, "there is no justification on principle for a manufacturing requirement in the copyright statute, and although there may have been some economic justification for it at one time, that justification no longer exists." This was true in 1976 when these words were included in both the House and Senate Reports on the Copyright Act of 1976, and it remains true today.

The manufacturing clause is bad intellectual property law and policy; it is a barrier to our membership in the Berne Convention for the Protection of Literary and Artistic Works; it has been found to violate our obligations under the General Agreement on Tariffs and Trade (GATT); and it cannot be justified on economic grounds. We believe that its proponents have failed to justify its permanent retention as proposed in S. 1938, let alone its expansion and permanent retention as proposed in S. 1822.

The manufacturing clause first found its way into U.S. copyright law in the Chace Act of 1891; when, after more than a century of "being the Barbary coast of literature," the United States chose to recognize the legitimate copyright interests of foreign authors. In return for granting foreign authors the protection of the U.S. copyright laws, and to assure that the U.S. book market would not be monopolized by foreign - particularly British - publishers and printers, Congress conditioned U.S. copyright protection on the requirement that all works, including foreign works, had to be manufactured here.

Relying on the experience with changes in the clause in 1904 and 1905 with respect certain foreign works, Congress made several changes in the manufacturing clause in the 1909 comprehensive revision of the copyright law. It exempted foreign works in languages other than English from the operation of the clause. It provided for a limited system of "ad interim" copyright for English language works first published abroad. And it defined manufacture to include printing and binding as well as type-setting. For the first time, the manufacturing clause was expressly acknowledged to be a means of protecting the U.S. printing industry from foreign competition.

Although liberalized in its application over the years, the clause remains an "onerous condition." It has been characterized as such by the late Stephen Ladas, an international scholar of intellectual property law, who further described the clause as amounting "to a discrimination against Great Britain." But, not only does the clause discriminate against foreign printers, it also discriminates against our own authors and publishers. For example, a British work can be published anywhere in the world -- even in the United States -- without suffering the slightest copyright impediment. An equivalent U.S. work, however, must be printed in the United States or the copyright owner must bear the brunt of the impediments imposed by the manufacturing clause. Today, we are urging other nations to improve their copyright

laws and to remove provisions in their intellectual property and trade laws that inhibit fair and free trade in protected works. Maintenance of this anachronism in our copyright law is an acute embarrassment to the United States and an invitation for emerging, newly-industrialized nations to do the same.

The Copyright Office's comprehensive report on the likely effects of the expiration of the manufacturing clause, issued July 22, 1981, clearly pointed out that the United States stands alone in maintaining even a limited requirement for domestic manufacture in its copyright law. Other nations who have deemed it necessary to provide support for their domestic printing industries have done so by means outside the copyright law in ways that directly benefit the industry without adversely affecting the copyright interests of authors and publishers. Should there be concern that elimination of the clause will cause injury to the U.S. printing industry, for which some relief is warranted, that relief should be provided by some means other than by distorting the principles of intellectual property law.

As indicated, the manufacturing clause is a copyright anomaly that has long separated American copyright law from the mainstream of international copyright law. It has certainly been one of the major impediments to the United States' adherence to the Berne Convention for the Protection of Literary and Artistic Works that you, Mr. Chairman, have characterized as the "premier international copyright convention." Adherence to the Berne Convention is an objective endorsed by the President on the recommendation of the former Cabinet Council on Commerce and Trade. One of the key principles of that Convention is its prohibition against imposing formalities that impede the existence and enjoyment of copyright rights in its member States. In the words of the Guide to the Berne Convention, published by the World Intellectual Property Organization (WIPO) and authored by the late Claude Masouye, "[f]irst and foremost, protection may not be made conditional on the observance of any formality whatsoever." The WIPO Glossary of the Terms of the Law of Copyright and Neighboring Rights, notes that:

"Some countries still require in the field of copyright compliance with certain formalities such as copy-right notice, deposit, registration or manufacture in those countries."

So long as the manufacturing clause, as presently constituted or

as it would be changed by either of the bills before you today, remains an integral feature of the U.S. copyright law, there is a barrier to adherence to the Berne Convention.

The interaction of the manufacturing clause and the provisions of Article 5(2) of the Berne Convention have long been a sore spot in our international copyright relations. In fact, one of the few areas where limited reciprocity, as an exception to the general rule of national treatment, is permitted under the Berne Convention is directly traceable to the reaction of Berne members to the 1909 version of the manufacturing clause. Article 6(1) of the Convention provides that a member of the Union may limit protection of the works of nationals of countries outside the Union that do not provide adequate protection. As the Guide to the Berne Convention describes Article 6(1), "[i]ts aim is to avoid, as far as possible, nationals of countries situated on the verge of the Union profiting from the fact that the Convention assimilates foreigners to nationals, by the device of publishing their works simultaneously in their own and in a Union country, where the protection offered by their own national law to Union authors is less than the minima laid down in the Convention or insufficient to offer reciprocity."

Both S. 1822 and S. 1938 would make the manufacturing clause permanent, opening the door to retaliatory measures by our major trading partners who are parties to the Berne Convention, and erecting a permanent barrier to our membership in the Berne Convention. We find S. 1822 to be an even more significant step backwards from a position of leadership in international intellectual property than S. 1938. At a time when we should be looking forward to the expiration of the clause, S. 1822 would broaden its coverage and dramatically alter its operation. S. 1822 would expand the scope of the clause to embrace all English-language printed material authored by a national or domiciliary of the United States. At present, only non-dramatic literary works preponderantly in the English language are covered. This change would require that, to enjoy full copyright protection, many works presently eligible for manufacture abroad be manufactured here, including blank forms, illustrated childrens' books, art books, printed music, and poetry.

This sweeping expansion of the clause is not justified and it is not needed. Many of the works that would be included are presently manufactured here despite the fact that they are not

required to be by the clause. To take but one example, because of their requirements for fast turnaround and close contact with the user, blank forms are usually domestically manufactured even though they are eligible for manufacture abroad. Indeed, the economic data included in the Copyright Office's report on the likely effects of the expiration of the manufacturing clause indicate that some works by foreign authors that are exempted from the clause are manufactured here for sound business reasons. Our printing industry is efficient and competitive and printing decisions are typically made relying on many factors including the costs of transportation, labor, paper, and ink as well as turnaround. In all of these areas, the report points out that U.S. industry enjoys a competitive or even a preferred position.

S. 1822 also eliminates the current exemption for production in Canada. It is ill-advised to eliminate this provision in light of the U.S. Government's recent initiation of discussions aimed at eliminating some of Canada's practices that may affect trade in printed material. Canada is presently considering comprehensive copyright revision and the removal of the Canadian exemption is an invitation for retaliation. Other specific changes proposed by S. 1822 for §601 create ambiguities in the law and raise questions about the rationale for the changes proposed by S. 1822.

Finally, S. 1822 would establish an entirely new procedure that would authorize the United States Trade Representative to waive the application of the clause where the country of export provides adequate and effective copyright protection for foreign works and that country either has no material nontariff barriers to trade in printed material or it has in force with the United States a free trade agreement governing trade in printed material. This provision does not alter our fundamental objection to this legislation.

The economic justification for these bills apparently proceeds upon the theories that the manufacturing clause can be a useful bargaining chip and that the printing industry will suffer severe losses if it is allowed to expire. These considerations have little or no merit. The "bargaining chip" theory is particularly weak. Any force this argument may have had was eliminated by the 1984 decision of the GATT Council holding the clause to be inconsistent with our GATT obligations. The more likely result of continuing the clause will be the withdrawal of concessions granted to the United States by countries that

are concerned about import competition from the United States and a general worsening of our relationships with our trading partners.

Economic data available to us does not support the contention that the printing industry will suffer severe losses when the clause expires. The potential impact of the elimination of the manufacturing clause on the book printing industry has been studied by the U.S. International Trade Commission, the U.S. Department of Labor, the Special Trade Representative's Office, and the Congressional Research Service. Of these studies, only the Department of Labor's 1981 study projected significant losses in U.S. printing industry employment, and we understand that the Department of Labor is preparing a new study. Consequently, we should not jeopardize the economic interests of other industries for the benefit of a printing industry that is relatively healthy and that has displayed an ability to compete successfully in international markets even when the strength of the dollar was causing severe problems for other exporters. Foreign demand for U.S. printed matter reached \$1.3 billion in 1985, of which \$600 million was for books. Imports amounted to \$1.2 billion, of which \$560 million was for books. In short, even though the U.S. printing industry has never been an aggressive international competitor, in 1983 it surpassed the Federal Republic of Germany as the world's leading exporter of printed material. I can only conclude that industry claims of severe dislocation and the impossibility of competing with low-wage foreign competition are exaggerated. The same fears have been routinely raised each time the clause has come up for renewal.

Studies suggest that book printing industry shipments should show average annual increases of 3% through the end of the decade. Increases in school enrollments, in disposable income, and in the number of bookstores should all lead to a larger book-reading public. Improved technology should lead to greater efficiency in book printing and should also increase domestic printers' ability to respond to publishers' needs. Foreign demand should remain high. Indeed, a number of printers have anticipated the clause's expiration and have entered into arrangements with foreign firms as a means of protecting their competitiveness at home and in overseas markets. These efforts should be encouraged. Extension of the clause would reduce the incentive to seek new export opportunities.

This clause was extended four years ago over the President's veto. It should now be allowed to expire in July 1986, as scheduled. We can find no legal or economic justification for retaining it, nor have the proponents of this legislation demonstrated a true need for its retention, let alone the expansion proposed in S. 1822.

This concludes my testimony. I shall be pleased to respond to any questions you may have.



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

Honorable Charles McC. Mathias, Jr.
Chairman
Subcommittee on Patents, Copyrights
and Trademarks
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter posing further questions concerning the issues raised at the January 21, 1986, hearing on S. 1822 and S. 1938. As you suggested we have consulted with representatives of the other Agencies who testified to coordinate our responses. My answers to your questions are enclosed.

Sincerely,

Donald J. Quigg
Assistant Secretary and Commissioner
of Patents and Trademarks

Enclosures

PTO RESPONSES
TO ADDITIONAL QUESTIONS FROM SENATOR MATHIAS

- 1Q. One problem with S. 1822, as discussed by Mr. Oman in his testimony, is the uncertainty it may inspire in the publishing and printing business. Since certification by the

USTR that a given country is exempt from the manufacturing clause may be pending at any given time, and since the certification may be withdrawn as well as granted, it may be difficult to plan printing projects with sufficient certainty about whether the resulting work will enjoy copyright protection in the U.S. This unpredictability may result even if the standards for certification are more definite than they are in the bill as currently drafted. Do you agree that this may be a result of S. 1822? If so, what will this uncertainty do to the incentive to create and publish that copyright provides? How is it likely to affect the stability and profitability of the printing and publishing industries?

- 1A. The status of a USTR certification of a foreign country under the procedures set out in S. 1822 will be a factor publishers consider when deciding where to print copyrightable works. If creating a certification procedure adds additional uncertainty as to where a work may be printed and imported without endangering its copyright status, publishers' decision making will be made more difficult.

However, factors other than the USTR certification must also be considered by publishers. These factors considered in the aggregate along with the availability of full U.S. copyright protection, will determine whether the work is published and where the work is printed. In most cases, practical business concerns will dictate that the works are printed here, and the impact of the expiration of the clause on the profitability and stability of both the printing and publishing industries will be small. Factors other than the cost of printing itself include:

- o Materials -- paper, ink, plates, film, chemicals, cover materials -- available in the U.S. are widely agreed to be competitive in cost and quality with such materials found anywhere in the world, and particularly in most low-wage countries.
- o Time delays, the ability to obtain fast reprinting services, and the necessity of close communications between publisher and printer on production specifications favor domestic printing.
- o Transportation costs, especially between the Far East and the U.S., make printing abroad more expensive as

these costs often exceed the cost savings projected through lower wages of foreign workers.

In view of these factors, we believe that the termination of the manufacturing clause is unlikely to increase significantly the overseas printing of U.S. publications. There are several marketplace realities that lead us to this conclusion:

- o Newspapers and periodicals are highly time sensitive. The coordination and communication between printer and publisher is so critical that the likelihood of their overseas production is negligible.
- o Commercial printing represents over 90 percent of all U.S. printing. Copyright is not a principal concern with much commercial printing -- certain blank forms, stationery and the like-- and termination of the clause will have no effect on this sector. Very little commercial printing of products not presently covered by the clause is done abroad, less than 0.5 percent. One sector of the U.S. printing industry, typesetting for U.S. books, is witnessing renewed expansion as a result of the increased use of word processing and computer composition.

The only printed products likely to be influenced by termination of the clause are some technical books and a few bimonthly or quarterly journals. These titles account for less than 10 percent of all book and periodical printing, and less than one percent of the total U.S. printing and publishing industry.

The present clause covers only "non-dramatic literary works" which excludes such books as art books, children's picture and painting books, works in the public domain, etc. Books that are topical or time sensitive, and popular works that require frequent reprinting because of uncertain demand, are unlikely candidates for foreign manufacture. Of the remaining books which could be printed abroad, transportation costs may more than offset any advantages of lower wages overseas. Bibles, for example, have a wide and unchanging U.S. market and are not subject to the clause; yet we are unaware of any U.S. bibles being printed abroad.

The U.S. book printing firms are making substantial investments in high-tech equipment designed to achieve higher productivity

and improve their competitive positions. The printing industry shows a pattern of rising employment in commercial printing, increasing at the rate of 3 to 4 percent annually, and stable employment in book printing. The printing and publishing industry enjoys a favorable balance of trade, a condition that is likely to improve with further advances in technology, such as laser printing and computer-assisted binding processes. The printing industry needs no protection. Any possible employment losses resulting from termination of the manufacturing clause will be insignificant and more than offset by the growth of printing employment resulting from other factors.

2Q. Because S. 1822 would bring under the manufacturing clause a great deal of material --for example, advertising material, maps, sheet music -- not now covered, its enactment could have a major impact on other copyright-related industries besides book publishing. Its repercussions could be felt in Silicon Valley, on Madison Avenue, and on Tin Pan Alley, and elsewhere as well. Has there been any assessment of the impact of this legislation on employment, profitability and growth in these affected industries, and on the effect on consumers of the products of these industries?

2A. No definitive studies or assessments have been undertaken to quantify the impact that proposed expanded coverage of the manufacturing clause might have on those U.S. industries using or producing printed products not presently covered by the clause. Most of the material that would be covered by the expanded coverage of S.1822 is already printed in the United States and the overall effect of the extension on the U.S. printing industry as a whole would be insignificant.

There are, however, some works presently printed abroad that would fall within the expanded coverage of S. 1822.

It is clear, however, that for some printed materials and their U.S. producers, the deleterious effects of the expanded coverage of the clause could be substantial. Certain speciality products are much more expensive to print in this country. Requiring U.S. authors and publishers to print these works in the U.S. would price these products out of the market, with consequent loss of U.S. publishing jobs and fewer opportunities for U.S. authors to publish. The net effect would be to replace U.S. authored works with foreign-authored works in the U.S. market in these specialty areas.

The areas that would be most adversely affected include:

- o Childrens' books. Illustrated, "pop-up", picture and coloring books would all be in danger of displacement by foreign authored works. Indeed, for some U.S. published children's books -- such as "pop-ups" -- the intensive hand labor involved in their production is available only in a few low-wage countries.
- o Pictorial, finely illustrated books. Because these works are highly price sensitive, require extensive craft treatments on low speed presses, and are manufactured in small quantities, they are generally printed and bound overseas. Extending clause coverage to these products will invite U.S. publishers to cease publication of these works or to engage the services of foreign illustrators, photographers, artists, writers and editors to produce such works in order to ensure full U.S. copyright protection. This could create considerable job losses in these U.S. occupations, by sending publishing jobs overseas rather than bringing printing jobs back to U.S. printers.
- o Other printed products. The expanded clause would apply to printed music, dramatic works, poetry, maps, charts, globes -- as well as an array of printed commercial items including posters, catalogs, advertising materials, greeting cards, labels, decals, business forms, postcards and calendars. If U.S. firms continue to have some of these products printed abroad, to the extent that they will be forced to employ foreign illustrators, photographers and publishing specialist to avoid the consequences of the manufacturing clause, U.S. job losses in publishing could result.
- o Scholarly works. While S. 1822 expands coverage of the clause, it would also eliminate the current exemption permitting the import of up to 2,000 copies. This would have a devastating impact on U.S. publishers of certain books and journals whose limited U.S. audience or circulation, combined with high manufacturing costs, encourages overseas manufacture. Not only would attrition among such titles be high, but more important would be the loss to the United States of the production and dissemination of scholarly works. The proposed expansion will force these books to become more expensive, in some

cases prohibitively so. Testimony from one U.S. publisher of illustrated works indicates a doubling in the retail price -- to \$29.95 from \$14.95 -- should domestic manufacture be required.

To the degree that U.S. consumers pay for the added expenses of these works, and therefore suffer economic losses, the overall readership of these books will diminish as prices increase. The Nation as a whole will suffer a far greater loss. U.S. education and literacy would suffer, the dissemination of scholarly research in the United States would suffer, and works expounding American heritage and culture will reach fewer audiences both at home and abroad. It is possible that foreign authored books may fill the void created in these speciality, high culture markets, with the result that U.S. scholars, authors, artists and illustrators -- particularly those not yet well-known -- will find it harder to publish their works. This would lead not only to income losses for them but reduced rewards for creativity and scholarship in the U.S. society as a whole.

The virtually certain retaliation from our trading partners as a result of expanding the clause could prove formidable. Exports of U.S. printed products, currently the world's largest with estimated 1985 shipments of over \$1.3 billion, would become the principal target for retaliation. The trade surplus in printed products, enjoyed by U.S. printers and publishers since World War II, would quickly become a deficit.

- 3Q. Under S. 1822, the USTR would be required to certify whether or not a country granted adequate and effective copyright protection, and had dismantled nontariff trade barriers in printed materials. How would the U.S. rate on those scales?
- 3A. The United States copyright law provides protection that exceeds the requirements of the Universal Copyright Convention by a wide margin. We have a well-developed fair, and impartial judicial system in which the private rights granted under our law can be enforced. Our copyright law provides an effective criminal enforcement system. However, so long as the manufacturing clause remains a part of our copyright law, we maintain a substantial nontariff trade barrier. We concur with the Department of State and the USTR that the presence of the manufacturing clause in its present

form or as it would be modified by S. 1822 would disqualify the United States for waiver under the provisions of S. 1822.

- 4Q. Wouldn't the existence of a manufacturing clause, conditioning copyright for domestic authors on domestic manufacture of the work, constitute a nontariff trade barrier for any country that maintained it?
- 4A. We would agree that a manufacturing clause in a foreign copyright law conditioning copyright for domestic authors on domestic manufacture of their works would be a nontariff trade barrier as that term is used in S. 1822. If such clauses were in place in the copyright laws of our trading partners, their publishers and authors would be precluded from going abroad for printing of their works and the U.S. printing industry would lose much of its foreign origin printing work.
- 5Q. Wouldn't the existence of a manufacturing clause, denying copyright to domestic authors whose works were not manufactured domestically, cast some doubt on a country's claim to offer adequate and effective copyright protection?
- 5A. We believe that a manufacturing clause is bad intellectual property law policy, whether it is in our law or the law of a foreign nation. While the imposition of such a rule upon works of domestic authors is permitted by Article III of the Universal Copyright Convention (UCC), it is widely recognized that that provision was included in the UCC solely to permit the adherence of the United States in view of the then current manufacturing clause. The insertion of these provisions into the UCC was one of the most contentious issues in its development. In fact, the original committee of experts considering the scope and nature of the treaty had envisioned a complete prohibition on the manufacturing clause. This objection was only overcome through a compromise that, in effect, required the United States to limit application of the clause to works by U.S. authors, rather than to all English-language works. Among our trading partners, and most notably in the United Kingdom, there is a strong sentiment that the maintenance of this 19th century provision casts serious doubt on the credibility of U.S. assertions of the need to bolster standards of protection in international copyright.

The "adequate and effective" standard is used in Article I of the UCC to define the level of protection to be afforded by member States. Since the UCC permits formalities such as requirements of domestic manufacture it would be difficult to say that the presence of a manufacturing clause alone would be sufficient to determine that a foreign country's copyright law did not afford "adequate and effective" protection.

6Q. The phrase "adequate and effective" is the term used in the Universal Copyright Convention. Would adherence to the UCC be enough to establish this prong of the USTR certification? Or would adherence to the Berne Convention be required?

6A. While it would be the responsibility of the United States Trade Representative to make the ultimate determination as to whether there is adequate and effective copyright protection for U.S. works in a foreign nation, we expect that heavy reliance will be placed on the intellectual property expertise of the Patent and Trademark Office and the Copyright Office in making that determination. We concur with the Department of State and the USTR that adherence to the UCC in and of itself would not be a sufficient basis for establishing that a country provides adequate and effective copyright protection. Other factors, including the effectiveness of enforcement of copyright in that country, would have to be considered. Adherence to the Berne Convention would not be required.

7Q. One justification offered for expanding the manufacturing clause to all printed material is the alleged difficulty experienced by Customs in applying the existing test of "preponderantly non-dramatic literary work." Are you aware of any major administrative difficulties that have been encountered on this score?

7A. We are not aware of any particular difficulty encountered by the Customs Service in applying the "preponderantly" standard of the manufacturing clause. Prior to the opinion in Stonehill Communications, Inc. v. Mortgage, 512 F. Supp. 349; 212 USPQ 500 (S.D.N.Y. 1981), there appeared to be some confusion over whether the test was to be applied to a work in a qualitative or a quantitative fashion. However, the court reviewed the actions of the Customs Service, the legislative history of the manufacturing clause, and the facts of the case, and held that:

"a book 'consists of preponderantly non-dramatic literary material... in the English language' when more than half of its surface area, exclusive of margins, consists of English language text."

Following this clear enunciation of an easily applied quantitative standard there has been no further litigation on the interpretation of this part of the manufacturing clause.

8Q. Could you please comment on two suggestions made by the Register of Copyrights.

The first is the idea of providing some protection against imports of printed material, but within the trade act rather than the copyright act. The second is to allow the clause to expire, but on the condition that it automatically come back into force if the dire consequences predicted by some are realized: i.e., if imports exceed a certain level.

8A. One major concern with the manufacturing clause is its incompatibility with the requirements of the Berne Convention. As we observed in our testimony, requirements in copyright laws that limit copyright protection for certain works, depending on their place of manufacture, are regarded as formalities forbidden by the Berne Convention. The second major objection to the manufacturing clause is its incompatibility with the General Agreement on Tariffs and Trade (GATT).

With regard to Mr. Oman's first suggestion, the Administration is unalterably opposed to maintaining this provision in the Trade Act. The GATT has determined that the extension of the clause in 1982 was a violation and that it constituted a trade barrier. Inasmuch as the Administration is urging that the dispute resolution practices under the international trade agreements be strengthened, and that similar procedures be introduced into the intellectual property treaties, our failure to take action consistent with the GATT ruling simply destroys our credibility in this area. How can we argue that other countries should dismantle trade barriers and open their markets while we blatantly maintain this unfair barrier to trade?

We are equally opposed to the second proposal, that the clause be maintained with a provision that would trigger its reinstitution should certain "dire consequences" occur. We

believe that such a provision would remain a barrier to U.S. adherence to the Berne Convention. In any case, it is difficult for us to see how criteria for such a mechanism could be established, and how it might operate.

- 9Q. We all know that a lot of the impetus for extending the manufacturing clause comes from concerns over Canadian treatment of both U.S. copyright materials and the tariff and nontariff barriers on our printed products. In fact, this subcommittee held a hearing in the last Congress on copyright controversies with Canada. What is the government doing to lower Canadian tariff and nontariff barriers on printed products?

Are there new developments on the copyright front with Canada that the subcommittee should be aware of? In particular, has there been progress on the problem of unauthorized rebroadcast of U.S. television programming?

- 9A. The Department of Commerce is cooperating with the Department of State and the USTR to supply supporting data in their efforts to reduce trade barriers with Canada.

With respect to new developments on the copyright front with Canada, recent communication from our Embassy in Ottawa indicates that the Government of Canada, in its response to the Parliamentary Subcommittee Report, A Charter of Rights for Creators, has endorsed a number of its recommendations. If adopted by the Parliament, these would include full copyright protection for computer programs, and a retransmission right that would appear to deal with the retransmission issue.

Senator MATHIAS. Thank you very much.
Mr. Milam.

STATEMENT OF WILLIAM B. MILAM

Mr. MILAM. Thank you, Mr. Chairman. I am pleased to be here to represent the State Department and testify on these two bills, S. 1822 and S. 1938, which would extend the life of the manufacturing clause.

The State Department opposes these bills because we believe that the continuance of the manufacturing clause would raise serious problems in our trade relations with other members of the GATT, the General Agreement on Tariffs and Trade, and could impede the adherence of the United States to the Berne Copyright Convention.

This manufacturing clause was enacted almost 100 years ago to protect the infant American printing industry, Mr. Chairman. Today, I understand our copyright interests believe that the clause

is out of date and that it is an anachronism to have a creative work dependent upon its being printed in the United States.

Both bills are illegal under the GATT. We were not able to convince the GATT that the present version of the manufacturing clause deserved an exception. S. 1822 is blatantly protectionist, because it removes all of the liberalizations included in our past legislation.

Our printing industry does not need 100 years of infant industry protection. If others are trading unfairly, we can negotiate or we can take the case to the GATT, or we can use existing trade remedy laws, section 201 or 301 of the trade legislation.

If we do not get the clause off the books, we expect there will be retaliation from Canada, the European Community and other countries. We will also lose credibility in the new round effort to liberalize trade.

Of equal importance with our concerns about U.S. trade objectives vis-a-vis these bills, Mr. Chairman, is the problem this legislation would create with respect to the proposed adherence of the United States to the Berne Convention.

I would like to emphasize that the continuance of the manufacturing clause would clearly be an obstacle to U.S. adherence to that convention. Adherence to this convention is an objective of the administration. It has been recommended by the former Cabinet Council on Commerce and Trade and endorsed by the President.

It is important to note that this country, the United States, is the only major industrialized market economy country that does not belong to the Berne Convention. Certainly, our membership in this convention would strengthen the international copyright system.

Membership in the Berne Convention would enable this country to play a leading role in the international copyright forum that would be commensurate with our position as the world's leading producer and consumer of copyrighted materials.

Again, may I repeat, because of these important considerations, the Department of State is opposed to the enactment of either of the two bills.

That ends my oral statement, Mr. Chairman. I would welcome questions at the proper time. Thank you.

[Mr. Milam's submissions for the record follow:]

PREPARED STATEMENT OF WILLIAM B. MILAM

My name is Bill Milam and I am the Deputy Assistant Secretary of State for International Finance and Development. The Department appreciates having the opportunity to comment on S.1822 and S.1938, two bills to amend the manufacturing clause of the Copyright Act (17 U.S.C. sec. 601). The effect of either of these proposals would be to extend the life of the manufacturing clause.

Continuance of the manufacturing clause in one form or another raises serious problems in our relations with other members of the General Agreement on Tariffs and Trade - the GATT - and could impede United States adherence to the Berne Convention for the Protection of Literary and Artistic Works.

The current provisions of the manufacturing clause generally require that nondramatic literary works written in English by American authors be printed in the United States or Canada to receive full copyright protection. The original manufacturing clause was enacted in 1891, almost one hundred years ago, as a protective device for the infant American printing industry. Today copyright interests believe it is an out-of-date anachronism to have copyright protection of a creative work dependent upon printing of that work in the United States.

I will not refer to specific details in the two bills since I understand that the other agencies testifying this morning will do so.

The Department of State has consistently opposed the continuance of the manufacturing clause. In 1981, when the Congress last considered the extension of the clause, the Department strongly supported its elimination. Then, as now, we considered it to be inconsistent with basic U.S. policy in international trade. It opens the U.S. to

serious criticism in the international copyright field as an unwarranted restriction. It raises GATT questions in itself and the exception for Canada from the restrictions of the clause, would continue in S.1938, which raises even more questions under the GATT.

In 1984, a GATT panel found the 1982 extension of the Manufacturing Clause to be inconsistent with U.S. obligations under the GATT. The panel did not accept the U.S. contention that the extension constituted continuation of legislation which was on the books when the GATT was established in 1947 and therefore excepted from U.S. GATT obligations.

S. 1822 takes a law which is clearly GATT illegal and makes it even more so by eliminating the Author's League exception, widening the subject matter covered, and ending the 2000 copy exemption. The U.S. printing industry has long outgrown the need for shelter from legitimate international competition. To the extent that other countries have erected tariff and non-tariff barriers to our exports, we should move to eliminate these through multilateral or bilateral negotiations. If these are not successful, we can use existing effective trade remedy laws and the GATT dispute settlement mechanism.

The provision in S. 1822 which provides an exemption for those countries with no barriers to U.S. exports does not represent a liberalization of U.S. law. Such treatment violates the GATT rule of non-discrimination. We fail to see how the exemption could be used to induce our trading partners to grant concessions. It could well have the contrary effect of spurring a massive foreign retaliation against exports of other U.S. products. The EC and others can be expected to use the inflated job loss figures cited by our industry in calculating the value of benefits they have lost through continued existence of the manufacturing clause.

As the U.S. prepares to play a key role in a new round of tariff negotiations designed to remove some of the remaining barriers to trade, our adherence to the anachronistic manufacturing clause appears increasingly irrational. Mr. Chairman, we risk losing our credibility, in the effort to improve the international dispute settlement process, if we let this provision stay on the books.

Equally important with our concerns about the proposed legislation in relation to U.S. trade objectives is the problem such legislation would create for the U.S. as we endeavor to adhere to the Berne Copyright Convention. Effective international copyright protection for the literary and artistic works of American nationals and the development of international agreements to secure such protection throughout the world have been major foreign policy objectives of the Department of State for many years. Of the utmost importance to these objectives is the long-standing view of the Department strongly favoring our adherence to the Berne Convention. Adherence to this Convention is an objective of the Administration; it has been recommended by the former Cabinet Council on Commerce and Trade and endorsed by the President.

In our view the principal reason for U.S. adherence to Berne is that it would strengthen the international copyright system. The United States is the only major industrialized country that does not belong to the Berne Convention. We believe that the pressing copyright problems arising out of new technologies such as computers and satellites can be dealt with better in the context of the Berne Convention than the Universal Copyright Convention, to which we belong.

The time has clearly come for the United States, as the world's foremost producer and consumer of copyrighted materials, to join Berne and thus be in a position to play a leading role in the international copyright scene fully

commensurate with our numerous and valuable copyright interests.

There is no question that the continuance of the manufacturing clause through enactment of either S.1822 or S.1938 would impede our adherence to the Berne Convention. This statement is based on the chapter on the manufacturing clause in the recently released preliminary "Report of the Ad Hoc Working Group on U.S. Adherence to the Berne Convention." The conclusion of this chapter states unequivocally that the manufacturing clause in the current copyright law (Section 601) "is not compatible with the Berne Convention to the extent that it applies to the works of foreign origin." This is so because the Berne Convention limits the imposition of "formalities" as a condition of copyright and it is generally recognized that the requirements of the manufacturing clause are such formalities.

Because of these important considerations which adversely affect U.S. trading interests and our international copyright objectives, the Department is opposed to the enactment of either of the two bills.



United States Department of State

Washington, D.C. 20520

February 28, 1986

Dear Mr. Chairman:

Following the January 21 hearing on S. 1822 and S. 1938, at which William B. Milam testified, additional questions were submitted for the record. Please find enclosed the answers to those questions.

As suggested in your letter, representatives of various government agencies discussed and coordinated portions of these responses.

Sincerely,

James W. Dyer
Acting Assistant Secretary
Legislative and Intergovernmental Affairs

Enclosure:
As stated

The Honorable
Charles McC. Mathias, Jr., Chairman,
Subcommittee on Patents,
Copyrights and Trademarks,
Committee on the Judiciary,
United States Senate.

Q: One problem with S. 1822, as discussed by Mr. Oman in his testimony, is the uncertainty it may inspire in the publishing and printing business. Since certification by the USTR that a given country is exempt from the manufacturing clause may be pending at any given time, and since the certification may be withdrawn as well as granted, it may be difficult to plan printing projects with sufficient certainty about whether the resulting work will enjoy copyright protection in the U.S. This unpredictability may result even if the standards for certification are more definite than they are in the bill as currently drafted. Do you agree that this may be a result of S. 1822? If so, what will this uncertainty do to the incentive to create and publish that copyright provides? How is it likely to affect

the stability and profitability of the printing and publishing industries?

A: The uncertainties described most likely would cause U.S. publishers to continue to have works printed by U.S. printers rather than printers in countries that had been certified. Publishers now choose to have most works not covered by the manufacturing clause printed by U.S. printers for numerous economic and commercial reasons. They will continue to do so as long as economics and commercial practices justify it. Despite uncertainties, however, in the case of works requiring special skills such as art books, many of which are not covered by the clause now but would be if S. 1822 were passed, a publisher would probably continue to have those works printed abroad where those special skills are available.

A review of the studies that have been done on the subject supports the conclusion that the U.S. printing and publishing industries will be affected little by the expiration of the clause or by its continuation with certification authority granted to USTR. Certification authority will, however, create a new bureaucratic procedure that will divert some of USTR's resources, or those of any other agency assigned responsibility, from the fundamental responsibilities of the agency. To be done adequately, it will require public notice, an opportunity for comment, interagency consideration, and final certification. Assuming our printing industry opposes a waiver for a particular country, special negotiations dealing solely with printed materials would have to be held.

In addition, the Customs Service will have to determine in each case that the works were "manufactured" in the country claimed. The matter will become more complex if the type were set in one country, the printing done in a second, and the binding done in a third.

Other GATT signatories are likely to withdraw benefits they have given us until the clause is eliminated rather than give us additional benefits for the possibility to compete in our market against our industry.

Q: You note that the manufacturing clause is an impediment to U.S. adherence to the Berne Convention. But, as the printers point out, it is not the only such impediment. Why do you think that extension of the manufacturing clause now would have particularly dire consequences for the movement toward Berne?

A: It is correct that the manufacturing clause is not the only impediment to U.S. adherence to Berne. However, we do not believe, as a practical matter, it is desirable to re-enact a piece of legislation, which is about to expire, at the same time that the Executive Branch and the Congress are identifying obstacles to U.S. adherence to the Berne Convention and considering what type of legislation may be necessary to eliminate these obstacles. Further, as the Department of State has indicated in its statement, there are other equally important reasons why the manufacturing clause should not be extended. The manufacturing clause has been of concern to a large number of Berne countries, some of whom have brought action before the GATT to seek retaliation for the 1982 extension of the termination date.

Q: It seems generally agreed that the manufacturing clause now on the books violates GATT. In part, this is because the law seems to be that changes in the trade laws are a one-way ratchet: liberalization of a trade barrier in existence at the time of adherence to GATT is permitted, but not further restriction. Under these circumstances, would enactment of S. 1822 constitute a new and additional GATT violation, since it imposes a domestic manufacture requirement on a great deal of material not now affected by the manufacturing clause?

A: A GATT panel found that the 1982 extension of the manufacturing clause was inconsistent with U.S. obligations not to restrict imports. The panel reasoned that unlike the original clause the extension was not "grandfathered". In

May 1984, the GATT Council adopted the panel's report, with the concurrence of the United States, and recommended that we eliminate the clause "within a reasonable time".

Another extension of the clause would represent a continuation of the existing GATT violation. Enactment of S. 1822 also would add a new violation by prohibiting imports of products that now are unaffected by the clause.

Q: Would a permanent extension of the clause, such as S. 1938, also constitute a new distinct GATT violation, since it would continue the temporary barrier in perpetuity?

A: Any extension would be a continuation of our existing violation.

Q: How about an extension of the clause for a definite time, as we did in 1982? Would that mark another GATT violation, or just a continuation of the present one?

A: An extension of the clause for a definite time would be a continuation of the existing violation. Other GATT signatories likely would conclude, with considerable justification, that they cannot rely on a termination date, and would treat extension with a termination date as an indefinite extension.

Q: Under S. 1822, the USTR would be required to certify whether or not a country granted adequate and effective copyright protection, and had dismantled nontariff trade barriers in printed materials. How would the U.S. rate on those scales?

A: In general terms, it is indisputable that the U.S. offers protection to eligible foreign works which is "adequate" and "effective". U.S. law contains at least the full complement of exclusive rights found in modern copyright laws. Duration of copyrights under U.S. law also exceeds that required by major international copyright conventions, namely the U.C.C. and the Berne Convention. U.S. law exemptions, although in some cases unique, are in

accord with international norms and do not provide for large-scale uncompensated commercial uses.

The U.S. court system is impartial, widely accessible, and able to provide significant legal and equitable relief to injured copyright owners. The Justice Department seeks and obtains criminal penalties against some of the most flagrant copyright infringers.

Some observers might argue that the formalities provided for under U.S. law are a hindrance to the enforcement of foreign copyrights here, but as a practical matter, the minimal formalities that are required under U.S. law and permitted by the U.C.C. in respect of foreign works have created no particular problems with respect to the enforcement of copyrights in foreign works.

Although U.S. Copyright Law provides adequate and effective protection to foreign works, the manufacturing clause does represent a major non-tariff barrier to trade in non-dramatic literary material. Consequently, unless the manufacturing clause is allowed to expire, it is unlikely that USTR, if asked to examine U.S. laws, would be able to certify that non-tariff barriers in printed materials had been dismantled in this country.

Q: (A) Wouldn't the existence of a manufacturing clause, conditioning copyright for domestic authors on domestic manufacture of the work, constitute a nontariff trade barrier for any country that maintained it?

Q: (B) Wouldn't the existence of a manufacturing clause, denying copyright to domestic authors whose works were not manufactured domestically, cast some doubt on a country's claim to offer adequate and effective copyright protection?

A: (A) Yes. Additionally, as long as the U.S. maintains the manufacturing clause in its law, it provides a readily observable model for developing and newly industrializing countries to consider including in their copyright laws.

They might choose to model their clauses not on the present U.S. clause, whose impact is borne exclusively by domestic authors, but on the original, 1890 model, which flatly conditioned copyright in all books, in whatever language, written by authors of whatever nationality, on domestic manufacture.

A: (B) No. The phrase "adequate and effective", drawn from the U.C.C., was placed in that treaty at a time when the U.S. manufacturing clause was substantially harsher than it now is, and the U.S. law was believed to comport with that standard. In addition, the phrase is designed to measure a state's treatment of foreign works. How a state treats its own works does not bear on whether it offers "adequate and effective" protection to the works of foreign authors. Both the present U.S. clause, and the clause to which this question refers, do not affect the answer to the question whether the protection offered foreign works is adequate and effective.

Q: The phrase "adequate and effective" is the term used in the Universal Copyright Convention. Would adherence to the UCC be enough to establish this prong of the USTR certification? Or would adherence to the Berne Convention be required?

A: While it would be the responsibility of the United States Trade Representative to make the ultimate determination as to the provision of adequate and effective copyright protection to U.S. works by a foreign nation, it is assumed they would rely in part on the intellectual property expertise of other Government agencies in making that determination. In our view, mere adherence to either convention would be insufficient, in itself. We would look at how rights can be acquired, exercised, and enforced in the country.

Q: One justification offered for expanding the manufacturing clause to all printed material is the alleged difficulty experienced by Customs in applying the existing test of

"preponderantly non-dramatic literary work". Are you aware of any major administrative difficulties that have been encountered on this score.

A: No. The Customs Service does not report any difficulty.

Q: Could you please comment on two suggestions made by the Register of Copyrights: (A) The first is the idea of providing some protection against imports of printed material, but within the trade act rather than the copyright act. (B) The second is to allow the clause to expire, but on the condition that it automatically come back into force if the dire consequences predicted by some are realized: e.g., if imports exceed a certain level.

A: (A) Whether the manufacturing clause is enacted as part of the copyright act or as part of the trade act is not relevant for trade purposes. In either case it is a nontariff barrier enacted into United States law and a violation of Article XI of the GATT. The reaction by our trading partners would be the same in either case. The Commission of the European Communities has on two recent occasions delivered formal notes to the Department of State in which they underscored the illegality of the manufacturing clause and urged that it not be renewed. Similarly, a British Parliamentary delegation was recently in Washington and was quite explicit in pointing out that the renewal of the clause would lead to retaliation. Certain industries would be targeted. In other words, selected US industries would pay a high price for the marginal benefit that might be gained by the printing industry.

(B) If provision is made for the clause to come into effect in certain circumstances it cannot be regarded as having "expired", only latent. If the clause is kept on the books, even on a conditional basis, it constitutes protectionist trade legislation in force and when triggered would subject us to legitimate challenges from our trading partners. The GATT has already found the manufacturing clause to be illegal, and the 1984 GATT panel recommended that the US be

urged "to bring the manufacturing clause into line with its obligations under the General Agreement". Even if the manufacturing clause is modified as suggested, we can be sure that the GATT would continue to regard it as illegal. As for "dire" consequences, existing trade legislation (e.g., Sec. 201 of the Trade Act of 1974) provides for remedies where import injury is demonstrated. It can be in the form of duty increases, import quotas, or a combination of the two. The President also can negotiate orderly marketing agreements with the countries that are the source of the imports.

Q: (A) We all know that a lot of the impetus for extending the manufacturing clause comes from concerns over Canadian treatment of both U.S. copyright materials and the tariff and non-tariff barriers on our printed products. In fact, this subcommittee held a hearing in the last Congress on copyright controversies with Canada. What is the government doing to lower Canadian tariff and non-tariff barriers on printed products?

(B) Has the printing industry sought your help? How have you responded?

A: (A) Canada eliminated its duties on most printed materials covered by the Florence Agreement during the Tokyo Round of Multilateral Trade Negotiations. They conditioned the elimination on their continued eligibility for waiver under the U.S. manufacturing clause or on the elimination of the clause. We have been working with the Government of Canada since 1983 to establish bilateral trade negotiations to eliminate barriers to our bilateral trade. On December 10, the President formally notified the Senate Finance Committee and the House Ways and Means Committees of our interest in entering negotiations with Canada. If neither of these Committees disapproves our request, we will begin discussions before summer. If S. 1822 passes, the duty on imports of printed material in Canada will be restored and the view of the Government of Canada regarding elimination of non-tariff barriers may be negative.

(B) Thus far, the printing industry has not sought our help in this regard.

Q: Are there new developments on the copyright front with Canada that the subcommittee should be aware of? In particular, has there been progress on the problem of unauthorized rebroadcast of U.S. television programming?

A: The Government of Canada is actively considering a revision of its 1921 Copyright Act. In the Report of a House of Commons Subcommittee ("A Charter of Rights for Creators"), issued in October 1985 it is recommended that a retransmission right should be provided in the revised copyright law. This would take care of the problem of unauthorized rebroadcast of U.S. television programming.

Q: Another area of concern is the Pacific Rim. Congress recently passed legislation conditioning trade benefits on adequate and effective protection of intellectual property rights. Can the manufacturing clause be used in the same way as S. 1822 anticipates, as a sanction compelling other countries to respect our copyright standards and open up overseas markets?

A: The provisions in the Trade and Tariff Act of 1984, particularly those which amended Section 301 of the Trade Act of 1974 and extended the Generalized System of Preferences, provide effective leverage in our efforts to improve intellectual property protection in countries where our industries have problems. Real economic sanctions can be imposed if problems go unresolved. The manufacturing clause, on the other hand, would provide little incentive since all that a country would gain from making significant changes in its domestic copyright law would be the chance to compete for a portion of the domestic market of one of the most competitive printing industries in the world. Denial of that opportunity would not be effective as a sanction, particularly with GATT signatories that would be able to retaliate against us until we eliminate the clause.

Senator MATHIAS. Thank you very much.
Mr. Holmer.

STATEMENT OF ALAN F. HOLMER

Mr. HOLMER. Thank you, Mr. Chairman. When the manufacturing clause was extended in 1982, the European communities asked to have a GATT panel review the extension. The United States told the panel that the manufacturing clause was grandfathered and, therefore, that our GATT obligations did not apply.

We made that argument strongly and strenuously, and we lost, Mr. Chairman. In May 1984, the GATT council adopted the panel's report. In general, the GATT prohibits quotas. In effect, the manufacturing clause is a quota; hence, the violation.

Why do we care? What is wrong with providing—

Senator MATHIAS. Mr. Holmer, would you suspend your testimony just for a moment? I have to take a quick call.

[Pause.]

The subcommittee will come to order. I apologize for that interruption, but sometimes those things are necessary.

Will you proceed?

Mr. HOLMER. Yes, sir.

Senator MATHIAS. My call will not be taken out of your time.

Mr. HOLMER. I was noting, as the prior witnesses had, that extension of the manufacturing clause would violate our GATT obligations. Why do we care? What is wrong with providing a little protection—actually, it is more than a little protection—but what is wrong with providing protection to 50,000 businesses, mostly small businesses, spread all over the country?

I think, in particular, two things are wrong. First, other countries will go to the GATT with this panel report in their hand and demand that they be authorized to take countermeasures; that is, whatever access they have been denied to the U.S. market, they will go to the GATT and demand, and successfully demand, that U.S. exporters should be denied that country's market.

Or they may follow the United States' example in the citrus case this last summer and simply retaliate without seeking GATT authorization. As you look around the hearing room, Mr. Chairman, you see representatives of a number of embassies from around the world. They are taking very copious notes of what I say and what everyone else here says, and I can guarantee you that if this clause is extended, they will be back.

Senator MATHIAS. I thought they were all the press. [Laughter.]

Mr. HOLMER. Not all.

It is no hollow threat, Mr. Chairman. The United States imposed tariffs and quotas on speciality steel in 1983. The European Community very quickly thereafter increased tariffs on U.S. exports of burglar alarms, sporting goods, and chemicals.

So what we are talking about here, and there should be no misimpression about this—we are talking about providing protection to one industry, the printing industry, at the expense of other industries yet to be determined.

The second thing that is wrong with this extension is that it tarnishes our credibility and harms our ability to improve the interna-

tional trading system. We are now beginning the process of undertaking a new round of trade negotiations.

One of the complaints we hear repeatedly from Congress and from U.S. industry is that the dispute settlement process just does not work adequately. They cite examples of U.S. exporters who are harmed by foreign quotas or subsidies or nontariff barriers and they say they ought to have confidence and the U.S. Government should have confidence that the dispute settlement process will work.

Well, how can we argue that the process needs to be improved when we flagrantly violate its decisions ourselves?

Beyond dispute settlement, a second priority in the new round is to achieve strengthened intellectual property protection in foreign countries. Other nations will not be receptive to our requests for increased protection of U.S. intellectual property rights if we retain a manufacturing clause that violates our GATT obligations and the Berne Convention.

That concludes my oral testimony, Mr. Chairman.
[Mr. Holmer's submissions for the record follow:]

PREPARED STATEMENT OF ALAN F. HOLMER

Thank you, Mr. Chairman. I welcome this opportunity to discuss the two bills pending before the Senate that would extend the "manufacturing clause" of the U.S. copyright law.

S.1938 simply would eliminate the expiration date, extending the clause in its current form. S.1822 would eliminate the expiration date but, in addition, would expand the scope of the manufacturing clause substantially. S.1822 also would authorize the United States Trade Representative to waive application of the clause to foreign countries by certifying that: (1) the country in question has no tariff or non-tariff trade barriers to imports of U.S. printed materials, and (2) it provides adequate and effective protection to copyrights.

The Administration strongly opposes enactment of any bill that would extend the manufacturing clause beyond the July 1 expiration date. I will limit my testimony to comments on the trade implications of extension.

First, extension of the manufacturing clause would violate our obligations under the General Agreement on Tariffs and Trade ("GATT"). GATT generally prohibits quantitative restrictions on imports. The United States notified the GATT, in 1954, that the manufacturing clause was inconsistent "existing legislation," excepted from our obligations by the Protocol of Provisional Application. In other words, we notified the GATT that the manufacturing clause was "grandfathered." During the Tokyo Round of the Multilateral Trade Negotiations (1973 to 1979), the European Communities ("EC") asked that the clause be included in the non-tariff trade barrier negotiations. U.S. representatives indicated that the clause had been narrowed considerably over the years and, under the 1976 amendment of the U.S. copyright law, would expire in July 1982. Based on the U.S. statement, the European Communities dropped the request.

When the clause was extended in 1982, the European Communities asked to have a GATT panel review the extension. The United States told the panel that the manufacturing clause was "grandfathered" and, therefore, our GATT obligations did not apply. We pointed to the 1954 notification as evidence of the clause's "grandfathered" status. We lost.

In May 1984, the GATT Council adopted the panel's report. It concludes that the 1982 extension of the manufacturing clause was new legislation, unprotected by the exception for "existing legislation" provided in paragraph 1(b) of the GATT Protocol of Provisional Application. In other words, the extension is not "grandfathered." The Council recommended to the United States that it bring its practice into conformity with GATT within a reasonable time.

Under Article XXIII, paragraph 2 of GATT, the Contracting Parties can authorize a signatory to withdraw concessions it has given to another signatory if the Contracting Parties "consider that the circumstances are "serious enough to justify such action." The Contracting Parties very likely would regard further extension of the manufacturing clause as "serious enough." Indeed, some signatories might retaliate without seeking authorization, following our example when we retaliated last summer against the European Communities in the citrus case without seeking GATT authorization. This would be particularly likely if the clause were not only extended but expanded.

While a country might withdraw trade benefits aimed at the U.S. printing industry, it might also aim at other U.S. industries. For example, when we retaliated against the European Communities in the citrus case (following a GATT panel report adverse to the EC), we raised our duties on pasta imports. When the European Communities retaliated against U.S. quotas and increased tariffs on specialty steel in 1983, it increased

tariffs on U.S. exports of burglar alarms, sporting goods and chemicals. In deciding on retaliation, a country is likely to choose U.S. products that are competitive in its market or made by a sensitive industry in the United States.

The European Communities already has reminded us of the GATT decision regarding the "manufacturing clause" and asked for assurances that the Administration will reject any extension. When the E.C. complained in the GATT about the 1982 extension, it claimed that it was entitled to \$250 million in compensation for the clause's four-year extension from 1982 to 1986. Further extension for an indefinite period, especially with expanded coverage, would lead to an even larger claim.

In addition to the harm that would be caused to U.S. industries, if other countries retaliate, harm would be done to both our multilateral and bilateral efforts to improve the international trading system. If we extend the clause again, in any form, we would demonstrate clear disregard for U.S. international trade obligations, particularly a dispute settlement process we have argued must be strengthened and adhered to by GATT signatories. Extension also could undermine seriously several years of painstaking effort to begin a new round of trade negotiations directed at improving the rules governing world trade including those for intellectual property.

The existence of the manufacturing clause also weakens U.S. bilateral efforts to achieve intellectual property protection in foreign countries. They will not be receptive to our requests for increased protection of U.S. intellectual property rights if we retain a manufacturing clause that violates our GATT obligations.

Mr. Chairman, that concludes my prepared statement. I would be happy to respond to any questions you or the other members of the Committee may have.

RESPONSES OF ALAN F. HOLMER

GENERAL COUNSEL
 OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
 TO ADDITIONAL QUESTIONS SUBMITTED BY SENATOR MATHIAS

1. Q. One problem with S. 1822, as discussed by Mr. Oman in his testimony, is the uncertainty it may inspire in the publishing and printing business. Since certification by the USTR that a given country is exempt from the manufacturing clause may be pending at any given time, and since the certification may be withdrawn as well as granted, it may be difficult to plan printing projects with sufficient certainty about whether the resulting work will enjoy copyright protection in the U.S. This unpredictability may result even if the standards for certification are more definite than they are in the bill as currently drafted. Do you agree that this may be a result of S. 1822? If so, what will this uncertainty do to the incentive to create and publish that copyright provides? How is it likely to affect the stability and profitability of the printing and publishing industries?

A. Publishers now choose to have most works not covered by the manufacturing clause printed by U.S. printers for numerous economic and commercial reasons. They will continue to do so as long as economic and commercial reasons justify it. Uncertainty such as you describe would be simply one more commercial consideration that would cause U.S. publishers to continue to have works printed by U.S. printers rather than printers in countries that had been certified.

Since the decision of an author or publisher to create or publish a work is not conditioned upon where that work may be printed, it is unlikely to be affected by either the continuation or the expiration of the manufacturing clause.

A thoughtful review of the studies that have been done on the effect of expiration of the clause supports the conclusion that the U.S. printing and publishing industries will be affected little by either its expiration or by its continuation with certification authority granted to USTR. What certification authority would do is create a new bureaucratic procedure that could divert some of USTR's resources, or those of any other agency assigned responsibility, from its fundamental responsibilities. As we stated in our testimony, other GATT signatories are likely to use the a-bird-in-hand theory of trade policy and withdraw benefits they have given us until the clause is eliminated rather than give us additional benefits simply for the chance to compete in our market against our industry. If, however, a country did request certification, USTR would have to provide public notice, opportunity for comment or possibly hearings, interagency consideration, and final certification. If our printing industry opposed a waiver for a particular country, special negotiations dealing solely with printed materials would have to be sought.

Waivers also would mean that the Customs Service would have to enforce the clause selectively, determining in each case the country of origin. They would have to devote resources to ensuring that the works were "manufactured" in the country claimed. At a time when we are concerned with the federal deficit, we ought to be eliminating diversions of resources, not adding new ones. We can do more for all U.S. industries by concentrating U.S. government resources on strengthening the multilateral rules governing

international trade, on bilateral negotiations to eliminate trade practices of other countries that violate those rules, and on enforcing U.S. customs laws based upon those rules.

2. Q. It seems generally agreed that the manufacturing clause now on the books violates GATT. In part, this is because the law seems to be that changes in the trade laws are a one-way ratchet: liberalization of a trade barrier in existence at the time of adherence to GATT is permitted, but not further restriction. Under these circumstances, would enactment of S. 1822 constitute a new and additional GATT violation, since it imposes a domestic manufacture requirement on a great deal of material not now affected by the manufacturing clause?

A. Another extension of the clause would be a continuation of the existing GATT violation. Enactment of S. 1822 also would add a new violation by prohibiting imports of products that now can be imported.

3. Q. Would a permanent extension of the clause, such as S. 1938, also constitute a new distinct GATT violation, since it would continue the temporary barrier in perpetuity?

A. Any extension would be a continuation of the existing violation.

4. Q. How about an extension of the clause for a definite time, as we did in 1982? Would that mark another GATT violation, or just a continuation of the present one?

A. An extension of the clause for a definite time would also be a continuation of the existing violation.

5. Q. S. 1822 targets perceived non-tariff barriers in printed materials. The U.S. is the world's leading exporter of printed material. We have a favorable balance of trade in this sector. This is so even though the U.S. is the largest part of the world market, and even though some observers think that the U.S. printing industry has not been very aggressive in seeking exports. Given these facts, and your perspective on U.S. trade problems generally, how serious is the problem of non-tariff trade barriers to U.S. printing exports? Is it one of the most serious problems we face in trade, or is it of lesser importance? Should non-tariff barriers in printing be the subject of special legislation like S. 1822?

A. The U.S. printing industry regards foreign laws dealing with printed material as serious barriers to its exports. Laws exist that can help U.S. industries seeking to eliminate practices of other countries that are inconsistent with the international rules and practices in international trade. Under Section 301 of the Trade Act of 1974, an industry can ask the U.S. Trade Representative to investigate another country's acts, policies, or practices, if they violate a trade agreement to which the U.S. is a signatory or if they are unjustifiable, unreasonable, or discriminatory and burden U.S. commerce.

6. Q. How would enactment of legislation extending the manufacturing clause affect our position in the GATT on the strengthening of dispute resolution mechanisms.

A. We frequently criticize other countries for not accepting the GATT's decisions when they are in our favor. If we not only ignore the GATT Council recommendation that we eliminate the clause, but then extend the clause, in spite of the fact that it violates the GATT, our arguments about the need for strengthening the dispute settlement mechanism will sound hypocritical, at best.

7. Q. Under S. 1822, your agency would have the responsibility to certify the absence of non-tariff trade barriers in printing. A lot would depend on how you define that term. I'd like your reaction to whether or not some of the following provisions, all of which have been characterized as non-tariff barriers, deserve that label:

A Value Added Tax applicable to all goods, including imported printed material;

government controls on retail prices for books and magazines;

tax and other incentives for export development.

We have had each of these provisions in effect in the U.S. at one time or another, except for the VAT, which is under active consideration. If these are non-tariff trade barriers, which must be eliminated in order to avoid the manufacturing clause, would we be seeking to hold other countries to a higher standard than we set for ourselves?

A. Whether the provisions in the list are non-tariff trade barriers would depend upon the way the country which has the a particular provision applies it. Since the practices would be subject to the GATT, we would need to review the country's practice in relation to the general obligations of the GATT and to limitations on those obligations. Even if a practice were not inconsistent with the GATT, we might bring a complaint in the GATT if we could demonstrate that the practice nullified or impaired benefits to which we are entitled under the GATT. As you point out, we need to look at our own practices before we bring a complaint to make certain that we are not setting a precedent that could be used against us later.

8. Q. Under S. 1822, the USTR would be required to certify whether or not a country granted adequate and effective copyright protection, and dismantled non-tariff trade barriers in printed materials. How would the U.S. rate on those scales?

A. We regard the copyright protection of foreign works in the United States as adequate and effective. The manufacturing clause is a non-tariff trade barrier which was found to violate the GATT. It reserves a large portion of the American market for printed materials for our domestic industry. We regard the market reserve practices of other countries as serious trade barriers.

9. Q. Wouldn't the existence of a manufacturing clause, conditioning copyright for domestic authors on domestic manufacture of the work, constitute a non-tariff trade barrier for any country that maintained it?

A. The manufacturing clause does more than give the infringer of a domestic author's work a complete defense in an infringement action. The manufacturing clause bans imports of certain printed materials unless they are manufactured in the U.S. or Canada; section 603 of Title 17 of the U.S. Code requires the Customs Service to enforce the ban. That flies in the face of Article XI of the GATT and is not justified by any of the limitation on obligations under the GATT. Even if there were no ban on imports, the clear advantage that would be given by the clause to domestic printed materials over imported materials would violate the "national treatment" obligation of the GATT without justification.

10. Q. Wouldn't the existence of a manufacturing clause, denying

copyright to domestic authors whose works were not manufactured domestically, cast some doubt on a country's claim to offer adequate and effective copyright protection?

A. Yes.

11. Q. The phrase "adequate and effective" is the term used in the Universal Copyright Convention. Would adherence to the UCC be enough to establish this prong of the USTR certification? Or would adherence to the Berne Convention be required?

A. Were we required to certify countries, we would probably use the same approach we are using in the GSP review. In that case, mere adherence to either convention would be insufficient, in itself. We would look at how rights are acquired, exercised, and enforced in the country before deciding whether to certify that country.

12. Q. One justification offered for expanding the manufacturing clause to all printed material is the alleged difficulty experienced by Customs in applying the existing test of "preponderantly non-dramatic literary work." Are you aware of any major administrative difficulties that have been encountered on this score.

A. No. The Customs Service does not report any difficulty.

13. Q. Could you please comment on two suggestions made by the Register of Copyrights.

The first is the idea of providing some protection against imports of printed material, but within the trade act rather than the copyright act. The second is to allow the clause to expire, but on the condition that it automatically come back into force if the dire consequences predicted by some are realized: i.e., if imports exceed a certain level.

A. U.S. trade law already contains a provision that would provide some protection if it were needed. Section 201 of the Trade Act of 1974 authorizes import relief for industries injured seriously or threatened with serious injury by an increase in imports. Relief is designed to allow the industry involved to adjust to the new competitive conditions. It can be in the form of duty increases, import quotas, or a combination of the two. The President also can negotiate orderly marketing agreements with the countries that are the source of the imports. Relief can be granted for a maximum of eight years. The President does have authority to compensate other countries for the loss of concessions the relief may have entailed.

When the United States adhered to the Florence Agreement, which obligates us to grant duty free treatment to many printed materials that fall within the scope of the manufacturing clause, it did so with a reservation. The reservation would authorize us to reimpose duties on imports of those materials if serious injury or threat thereof were found in a section 201 investigation.

Our industry is one of the most competitive in the world. It has many built in competitive advantages, as demonstrated by publishers' practices in the case of most works outside the scope of the clause.

14. Q. We all know that a lot of the impetus for extending the manufacturing clause comes from concerns over Canadian treatment of both U.S. copyright materials and the tariff and non-tariff barriers on our printed products. In fact, this subcommittee held a hearing in the last Congress on copyright controversies with Canada. What is the government doing to lower Canadian tariff and non-tariff barriers on printed products?

A. First, as part of total tariff "package" we obtained from Canada during the Tokyo Round of Multilateral Trade Negotiations, Canadian duties on most printed materials covered by the Florence Agreement were eliminated. Canada, however, conditioned the elimination on their continued eligibility for waiver under the U.S. manufacturing clause or on the elimination of the clause. If S. 1822 is enacted, the duties will return to their original level.

Second, in 1983, the U.S. government proposed establishing bilateral trade negotiations with the government of Canada to eliminate barriers to our bilateral trade on a sectoral basis. Canadian elections in 1984 prevented those discussions from taking place. During 1985, the United States has discussed developing a free trade arrangement with Canada either on a sectoral or an overall basis. On December 10, 1985, the President formally notified the Senate Finance Committee and the House Ways and Means Committees of our interest in entering negotiations with Canada. If neither of these Committees disapproves our request, we will begin negotiations before summer. Such negotiations would include both tariff and non-tariff barriers on printed products.

15. Q. Another area of concern is the Pacific Rim. Congress recently passed legislation conditioning trade benefits on adequate and effective protection of intellectual property rights. Can the manufacturing clause be used in the same way as S. 1822 anticipates, as a sanction compelling other countries to respect our copyright standards and open up overseas markets?

A. The provisions in the Trade and Tariff Act of 1984, particularly those which amended section 301 of the Trade Act of 1974 and extended the Generalized System of Preferences, provide effective leverage in our efforts to improve intellectual property protection in countries where our industries have problems. Real economic sanctions can be imposed if problems go unresolved. The manufacturing clause, on the other hand, would provide little incentive since all that a country would gain from making significant changes in its domestic copyright law would be the chance to compete for a portion of the domestic market of one of the most competitive printing industries in the world. Denial of that chance would not be effective as a sanction, particularly with GATT signatories that would be able to retaliate against us until we eliminate the clause.

16. Q. You maintain that if the clause is extended, you expect retaliation from our trading partners. What form is the retaliation likely to take? What industries could the retaliation affect?

A. The U.S. government does not have statutory authority to grant compensation to other countries should the clause be extended. Other countries, therefore, would seek the GATT's authorization to withdraw concessions they have granted us in earlier trade rounds. This would probably mean an increase in duties for a mix of products, the value of which equals that of the harm done by the extension of the clause. Import restrictions also could be imposed.

We don't know what products would be selected for retaliation, of course, but we can guess at a couple strategies that a country might follow in making that selection. The country might target U.S. printed materials, paper, inks, and printing machinery since U.S. producers of those products would be seen as benefiting from the clause. On the other hand, the country might choose to raise duties or impose quotas on products facing stiff competition from U.S. exports, hitting industries where the U.S. has a competitive

edge in the country's market. In either case, the withdrawn concessions would not be restored until the clause was eliminated.

17. Q. In his testimony, the Register of Copyrights maintains that S. 1822 imposes on the USTR a difficult negotiating posture. On the one hand, the USTR must stress to foreign countries the importance of copyright and urge those countries to enact copyright legislation protecting U.S. nationals. After taking this position, the USTR must then threaten that if the foreign country denies U.S. nationals effective copyright protection, we will deny that country certification, which means that some U.S. copyright proprietors will be denied effective copyright protection in the United States. Please comment on this. Will this contortion be as difficult to perform as it sounds?

A. During bilateral copyright consultations in connection with the Generalized System of Preferences and section 301 of the Trade Act of 1974, foreign government representatives have suggested differential treatment for copyrightable subject matter in order to assist certain of their domestic industries. We have advised that such treatment would be unacceptable. The continued existence of the manufacturing clause, particularly in light of the GATT's decision, makes our position untenable.

Senator MATHIAS. Thank you very much.

Let me say to each of you, and I will make the same request of witnesses who will follow you, that if there are followup questions, I hope that you can respond as quickly as possible because of the limited referral time that these bills have before this subcommittee.

As you know, after February 28, both of these bills will automatically be discharged from this subcommittee. In addition, we expect to receive into the record additional written statements on the extension of the manufacturing clause. In particular, we expect to hear from the Department of Labor and from the International Trade Commission on the impact that the expiration of the manufacturing clause would have on jobs in the United States.

We will hear this morning about the 1981 Labor Department study. The record should reflect that on January 16, 1985, I wrote to the Labor Department and asked for an update of the 1981 study, and we will include that update in the record when it is received.

[Reports prepared by the International Trade Commission and the Department of Labor, subsequently submitted for the record, can be found in the appendix.]

At this time, I am going to enter into the record a message on the extension of the manufacturing clause from the Delegation of the Commission of the European Communities.

[Document referred to above follows:]

DELEGATION
OF THE
COMMISSION OF THE EUROPEAN COMMUNITIES

The Delegation of the Commission of the European Communities presents its compliments to the Department of State and has the honour to refer to the report of the GATT panel (L/5609) on the manufacturing clause adopted by the GATT Council on 15 May 1984 (L/5734) and particularly the findings and conclusions thereof, as well as to its note verbale on this subject dated 13 November 1985.

The Delegation of the Commission of the European Communities recalls that a GATT panel has found that the manufacturing clause is inconsistent with the General Agreement and nullifies or impairs benefits accruing to the European Communities under the GATT. These findings were adopted by the GATT Council in May 1984 together with a recommendation that the U.S. should bring the manufacturing clause into line with its obligations under the General Agreement. The U.S. Administration undertook "to make every effort to make its practice conform with GATT provisions". The European Communities have since pressed the U.S. Administration for action but are not aware of any steps taken by the U.S. Administration to rescind the manufacturing clause.

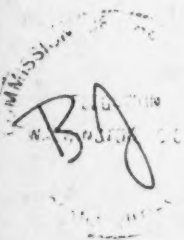
It is therefore with very great concern that the European Communities note that draft legislation has been introduced in both Houses of Congress which could extend the manufacturing clause indefinitely, and, in the case of Senator Thurmond's Bill (S.1822), expand its coverage to include all printed material. If the legislation were adopted, the United States would not only have failed to implement the panel recommendation,

but would have deliberately reenacted legislation found to be inconsistent with its obligations under the GATT.

Reenactment of the manufacturing clause would be wholly unacceptable to the European Communities. The United States Administration has, on numerous occasions, stressed the importance it attached to GATT dispute settlement procedures. The prolongation of the manufacturing clause beyond July 1986 would be tantamount to a deliberate flouting of GATT rules.

The Community believes that the manufacturing clause seriously restricts EC exports of printed material to the United States. In view of the Senate Judiciary Sub-Committee Hearings, scheduled for 21 January, 1986, on the Bill introduced by Senator Thurmond to make the manufacturing clause permanent, the Delegation of the Commission of the European Communities feels obliged to alert the U.S. Administration to the European Communities' intentions, should the clause be reenacted, to seek authorization from the GATT contracting parties to take appropriate retaliatory measures commensurate with the damage to the European Communities' export interests.

The Delegation of the Commission of the European Communities avails itself of this opportunity to renew to the Department of State the assurance of its highest consideration.



Washington, D.C.

January 15, 1986

Senator MATHIAS. Now, let me put this question to the panel at large. The printing industry contends that without a manufacturing clause, it is vulnerable to tremendous penetration by imports. Without commenting necessarily, unless you want to, on whether you think that is a correct perception, could you tell us what import remedies are currently available should their fears be factual?

Mr. HOLMER. Yes, Mr. Chairman. There are a variety of remedies that are available. One is provided under section 201 of the 1974 Trade Act, which indicates that if an industry is being seriously injured as a result of imports, it can bring a case to the International Trade Commission which, if it finds serious injury to that industry, will make a recommendation to the President.

The President, in all but two instances during his tenure when the ITC has made that kind of recommendation to him, has provided relief. He provided very meaningful relief to the carbon steel industry, the speciality steel industry, and the motorcycle industry.

It is also possible that cases can be filed under the dumping or countervailing duty statutes which I had responsibility for administering at the Commerce Department for the last 2 years. Section 301, which is addressed principally at barriers to U.S. exports to foreign markets, would also be available to the printing industry.

But as far as imports are concerned, principally it is section 201 for fairly traded imports and the dumping and countervailing duty laws for unfairly traded imports.

Senator MATHIAS. Any further suggestions on that?

[No response.]

Could an extension of the manufacturing clause affect efforts to enhance intellectual property protection worldwide? As I think each of you knows, we are engaged in fights over piracy of various kinds which challenge copyright protection.

We are facing the impact of technological advances which make copying so easy that it defeats the purpose of copyright protection in many cases. So what is the impact of the manufacturing clause in that context? Take the case of computer software for one example. Would it be likely to build consensus on the need for protection for computer software? Could it have some effect on multilateral relations in the patent field which is governed by some of the same principles? What are your thoughts on this broad impact of the legislation?

Mr. OMAN. I would be happy to start out, Mr. Chairman. On the patent issues, I am sure Commissioner Quigg would like to intervene. I think the answer to your question is that it will not have a direct relationship on things like protection of computer software, semiconductor chips and the like, in the international arena.

But it certainly would affect the moral position of the United States in its ability to complain about the unfair treatment of our works by foreign governments when they can turn the tables on us and accuse us of a degree of irrational favoritism that unfairly affects their industries.

In a larger sense, I think it might have an adverse effect if it somehow stands in the way of our adherence to the Berne Convention. The Berne Convention, as Commissioner Quigg mentioned, is the premier international copyright treaty.

If, as a result of the manufacturing clause and other factors that constitute formalities which are contrary to the provisions of the Berne Convention, we were unable to enter, were the decision made to enter, I think that would have a very direct bearing on our ability to get protection for U.S.-copyrighted products in foreign markets, including the one you mentioned, computer software.

Mr. MILAM. Mr. Chairman, I was just going to add, following on to his point about the moral authority of the United States in this area, we do a great deal of work, and I think have made a lot of progress, bilaterally on this issue with countries particularly in the Pacific Rim.

Again, we think that the continuance of this clause will give them reason to resist our bilateral efforts and perhaps to adopt similar measures for their own infant industries. I would also say that the manufacturing clause certainly would be a major obstacle to our adherence to the Berne Convention.

Mr. QUIGG. Mr. Chairman, I would like to simply comment on what effect it would have on our ability to persuade some of the more advanced developing countries to adopt strong intellectual property laws.

We have been working very hard with Malaysia, Singapore, and South Korea to persuade them to put in strong copyright protection, as well as other intellectual property laws. Invariably, they raise the point of this manufacturing clause and our response up to now has been to point to the expiration date of July 1986.

If this is extended, it destroys our credibility with those countries. I might point out that we recently received a draft of a copyright law from Malaysia and unlike the previous law, it did not have a restriction such as the manufacturing clause, and we think we have made very good progress in this area.

With respect to the patent area, it cannot help but affect the conversations that we have with the developing countries in trying to get them to provide reasonable and strong patent protection.

They like to have as much protectionist-type provisions in their laws as they can possibly get, and if we do not get rid of this manufacturing clause, I think that our chances of that persuasion are going to be dramatically reduced.

Senator MATHIAS. I suppose beyond that prediction—the reduction that Commissioner Quigg talks about—there is some possibility of retaliation. If the clause were to be extended, would you expect retaliation? In what form could we anticipate that retaliation would take place? What domestic industries would be affected by retaliation?

Mr. HOLMER. Mr. Chairman, part of that can be answered and part of it, there is really no way of knowing. Do we expect retaliation? Absolutely. You would have a foreign country that would go to the GATT or act unilaterally and they would attempt to, in all likelihood, set tariffs on U.S. exports to that country at such a level so that our exports to that country would be reduced to the extent that they believe that their exports to the United States have been reduced as a result of the manufacturing clause.

What industries they would pick, I do not know, although based on our recent experience with the Europeans, I would anticipate that they would attempt to select industries in the United States

that are very sensitive and ones where their action will not go unnoticed in the United States and in the Congress.

But in terms of what sectors they might pick out, it is very difficult to know at this stage.

Senator MATHIAS. Commissioner?

Mr. HOLMER. I would expect one thing, however, and that is, as you know, there is currently an exemption in the manufacturing clause with respect to Canada. As a part of that, the Canadians have agreed to duty-free treatment for exports of our books to Canada.

I think you can expect that if the manufacturing clause is extended and the exemption for Canada is removed, as would be the case in S. 1822, the Canadians would very radically change their trade posture with respect to books, which have benefited from a trade surplus between the United States and Canada.

Senator MATHIAS. Mr. Milam, did you want to add something?

Mr. MILAM. Just to say, Mr. Chairman, that the State Department agrees absolutely that there will be retaliation by our trade partners, the Europeans and the Canadians, in the instance just described.

We think that the retaliation would be done through the GATT mechanism. We think that some of the countries might start by looking at U.S. exports in the areas related to this, such as newsprint or wood products, wood pulp, forest products. But I am quite sure that they would go beyond and look for other products that are sensitive here. Thank you.

Mr. QUIGG. Mr. Chairman, I would like to refer to a couple of matters once again dealing with the underdeveloped countries. We have been working very hard trying to get a lot of the developing countries to protect chemicals and chemical compounds.

They have not seen fit to give that sort of protection in their laws primarily because they feel that the organizations or the countries that will be getting protection will be countries like the United States.

If this manufacturing clause is continued, it seems to me that this, once again, gives them a strong argument that we are protecting our markets and they are entitled to protect theirs in the best way they see fit.

Also, we have been working very hard in trying to get the Canadians to drop some of the mandatory licensing for pharmaceuticals and things of this sort. It seems to me that this gives them one more argument that they can use against us in saying no to the requests that we are making of them.

Senator MATHIAS. What would be the effect on our position in GATT on strengthening dispute resolution mechanisms?

Mr. HOLMER. Mr. Chairman, it has a decidedly negative effect on that.

Senator MATHIAS. Is that important?

Mr. HOLMER. It is very, very important. We regard that as being one of the top two or three items on our agenda in the new round of trade negotiations. Congressmen, Senators, members of private industry repeatedly come to us and complain about that process, and they complain about it with justification.

There has to be a process that comes out with timely, definitive results and which will be adhered to by the various contracting parties to the GATT. The United States comes into that exercise without clean hands if we flagrantly violate a GATT panel report that directs the United States to remove its manufacturing clause.

That is precisely what we would be doing if this clause were extended beyond this year.

Senator MATHIAS. I have one more question, then I want to yield to Senator Leahy. We all know that some of the impetus for extending the manufacturing clause arises over unhappiness about Canadian treatment of both U.S. copyright materials and the tariff and the nontariff barriers on printed products.

In fact, we held a hearing in the last Congress on copyright controversies with Canada. Now, in the light of your concern over this whole matter, what is the administration doing to lower Canadian tariff and nontariff barriers on printed products?

Mr. HOLMER. Ambassador Yeutter had a meeting as recently as 2 weeks ago with some of the representatives of the printing industry who will be testifying today. The concerns that they have raised with him are being raised with the Canadians at a very high level.

The whole process of undertaking a new free trade negotiation with the Canadians, we feel, will provide an excellent forum for attempting to address those problems, and it will be a very high priority in the Office of the U.S. Trade Representative to address those problems.

I would apply that not just to Canada, but around the world. If there are barriers which are in violation of the international rules, we would like to hear about them.

Senator MATHIAS. Have you heard from the printing industry on this?

Mr. HOLMER. As I indicated, the printing industry has been in touch with the USTR previously. Specifically, they raised the issue with Ambassador Yeutter and me about 2 weeks ago; we have promised to follow up aggressively on the concerns that they raised at that time.

Senator MATHIAS. Has there been any progress on the question of unauthorized rebroadcast of United States television programs?

Mr. OMAN. If I could answer that one, it touches on the copyright portfolio. There have been several signs of progress in Canada on the copyright front, but as you once observed, Mr. Chairman, quoting the old spiritual, "Talking about heaven and getting there are two different things."

Canada is moving expeditiously toward revision of its copyright laws, and at the end of 1985 a Parliamentary subcommittee made recommendations for revision of the law and U.S. industry representatives have responded favorably to those suggestions.

So Canada is in the process of moving in a direction that would solve some of the problems that Senator Leahy has been concerned with and that the committee addressed last year. Home video rights, cable television—these continuing disputes are addressed in the proposed revision and, I think, move in the right direction.

There is a stronger and more constructive sense of the interrelationship of our cultural markets and, I think, a growing realization

in Canada that they can protect their own cultural identity without denying rights to U.S. authors.

But as I say, we are in the talk stage and we have not yet seen any hard evidence of reform.

Senator MATHIAS. Thank you very much. It seems that this is a good point at which to yield to Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman. I am somewhat shaken by the suggestion that simply talking about heaven is not enough to get there. We have done that with balanced budgets in the Congress.

Senator MATHIAS. Well, I think, to be precise, "not everybody talking about heaven is going there."

Senator LEAHY. Well, I will not talk about it at all. [Laughter.]

Mr. Oman, as I have read your testimony, you are in favor of eliminating formalities from the Copyright Act which do not serve a copyright purpose, especially if retaining them would impede U.S. adherence to the Berne Convention. Is that correct?

Mr. OMAN. Yes, sir.

Senator LEAHY. Does that mean that you would also favor eliminating the deposit requirement in the current copyright law?

Mr. OMAN. Those are the issues that we will be studying over the course of the next few months and years as we study the requirements of adherence to the Berne Convention. In fact, an ad hoc committee report has been published, or is about to be published, that would raise those issues in a formal sense and really start the debate rolling.

We have not prejudged what requirements would be made on us by the member nations of the Berne Union were we to join, the formalities being one of those issues.

Senator LEAHY. But you are in contact with the secretariat of the Berne Convention?

Mr. OMAN. Well, we are in continuing correspondence and they keep us informed of developments over there, as we keep them informed of developments in this country.

Senator LEAHY. Now, Mr. Quigg, I understand the Department of Labor was also invited to present their views here this morning. The Department of Commerce does not have to speak for the Department of Labor, I know, but are you aware of why the administration chose not to send a witness from the Department of Labor?

Mr. QUIGG. No, sir, I am not.

Senator LEAHY. Are you aware that the Department of Labor has conducted a new study on the impact of eliminating the manufacturing clause and has concluded that elimination could still result in the loss of about 100,000 jobs in our economy?

Mr. QUIGG. Mr. Holmer says that he—

Senator LEAHY. Mr. Holmer?

Mr. HOLMER. Mr. Leahy, I was advised informally that the Department of Labor had not been invited. My understanding is that the various Cabinet officers were invited, but with the recent death of Mrs. Brock, Secretary Brock was not invited to testify.

Senator LEAHY. I see. Senator Mathias has noted that we have asked for an update of the labor Department's study. That is my primary interest; I would like to review its findings.

Does Canada impose any tariffs on the importation of printed copyright works now?

Mr. HOLMER. I am advised that they do not impose tariffs.

Senator LEAHY. I will repeat some of these questions for the record in case you want to double check your information.

Mr. HOLMER. Fine.

Senator LEAHY. Does Canada permit outside ownership of Canadian publishing houses?

Mr. HOLMER. My understanding is that they do not. This is an issue that has arisen more recently than a couple of years ago and one that has been raised at the very highest levels of our two governments, expressing the very strong concern that the United States has on that subject.

Senator LEAHY. Korea and Taiwan have been printing unauthorized copies of works of foreign authors, especially of American authors. What is the status of our trade negotiations with Korea and Taiwan in protecting American intellectual property? Are negotiations accomplishing something or are we just letting them pirate American intellectual property?

Mr. MILAM. There is a new copyright law in Taiwan.

Senator LEAHY. Are we being tough or only talking tough?

Mr. MILAM. We are being tough, sir. There is a new copyright law in Taiwan which is a good one and we are talking to the South Koreans and urging them to enact a new law. They have come up with a draft law, but we are still pushing on that.

Senator LEAHY. They do not like copyright laws in Korea, do they?

Mr. MILAM. I beg your pardon?

Senator LEAHY. Do they even like copyright laws in Korea? It has been so profitable in Korea to pirate other people's works and print them, knowing that Koreans and other countries let them get away with it. Why should Koreans even want to have a copyright law?

Mr. MILAM. Well, we think we are making progress there, Senator.

Senator LEAHY. What kind of pressure do we bring? What do we offer them? Are we going to tell them they can steal something else if they stop stealing copyrighted works? I do not mean this facetiously. Korea is not going to cease pirating American works just because American negotiators are nice and cheerful. They are not going to cease piracy for altruistic reasons.

Mr. HOLMER. That is absolutely correct, Senator. I think we are being tough. The President has taken the extraordinary step of directing that a section 301 investigation be self-initiated with respect to Korea on the intellectual property rights issue.

Senator LEAHY. Good; that is tough.

Mr. HOLMER. That is proceeding on a very aggressive time track. We are optimistic about being able to achieve a settlement of that. We have made clear to all GSP beneficiary countries that the protection of intellectual property rights will be an important factor in determining GSP benefit levels.

In the other areas, Singapore and Malaysia have recently drafted new copyright laws. Taiwan has passed new copyright and trademark laws.

Senator LEAHY. I talked with a minister of finance in Singapore once about copyrights, and I thought the poor man was going to have a heart attack; he started laughing so at even the thought of doing anything to stop their bootlegging piracy in that country.

The reason I ask these questions is, just take it a different way.

Let me offer an example to demonstrate why I think the problem of piracy is so serious. If a consumer product, manufactured in the United States, was shipped to Korea, Taiwan, or Singapore, if those countries' troops marched on board and expropriated the American goods and sold the goods themselves, can you not imagine what this country's reaction would be?

No matter who our President was, Democrat or Republican, he would say that kind of piracy is intolerable. But that is just what is essentially happening. Somebody writes a book in this country. That is his or her property; he or she puts everything into it and these people just steal it.

Mr. HOLMER. Well, Senator, I agree that we should be acting aggressively in this area. I believe that we are. I also believe that if the manufacturing clause is extended, it would inhibit our efforts.

Senator LEAHY. I will not take more time now, Mr. Chairman, but I will follow up with some specific questions later in these hearings.

Thank you.

Senator MATHIAS. Thank you, Senator Leahy. I, too, have a number of other questions, but in view of the passage of time, I think I am going to submit them in writing. As I previously requested, we would like to have your answers as quickly as possible. Thank you very much for being with us.

Our next panel includes Mr. Howard D. Samuel, president of the Industrial Unions Department of the AFL-CIO; Mr. James J. Norton, president of Graphic Communications International Union; Mr. Arthur C. Prine, Jr., vice president and director of relations services of R.R. Donnelley & Sons; and Mr. Benjamin Y. Cooper, senior vice president of government affairs of the Printing Industries of America.

Gentlemen, in what order do you want to testify?

Mr. SAMUEL. We start from right to left, Mr. Chairman, if that is agreeable.

Senator MATHIAS. That is fine.

Mr. PRINE. It is appropriate that you be on the right, Howard.

Senator MATHIAS. Well, he is on my left.

STATEMENT OF A PANEL CONSISTING OF HOWARD D. SAMUEL, PRESIDENT, INDUSTRIAL UNIONS DEPARTMENT, AFL-CIO, WASHINGTON, DC; JAMES J. NORTON, PRESIDENT, GRAPHIC COMMUNICATIONS INTERNATIONAL UNION, WASHINGTON, DC; BENJAMIN Y. COOPER, SENIOR VICE PRESIDENT, GOVERNMENT AFFAIRS, PRINTING INDUSTRIES OF AMERICA, INC., ARLINGTON, VA; AND ARTHUR C. PRINE, JR., VICE PRESIDENT, RELATIONS SERVICES, R.R. DONNELLEY & SONS, CHICAGO, IL, ON BEHALF OF THE BOOK MANUFACTURERS INSTITUTE

Mr. SAMUEL. Mr. Chairman, I am Howard D. Samuel, president of the Industrial Unions Department of the AFL-CIO. I have a

brief oral summary of my full statement, which has been entered for the record with the chairman's approval.

I am testifying on behalf of our 5 million members and, in particular, on behalf of the graphic arts and printing unions which represent more than 400,000 members throughout the United States and Canada.

We support S. 1938—

Senator MATHIAS. Many of whom are in Maryland.

Mr. SAMUEL. Pardon?

Senator MATHIAS. Many of whom are in Maryland.

Mr. SAMUEL. Yes, many of whom are in Maryland.

We support S. 1938, which will permit Congress to avoid making the tragic mistake of allowing the manufacturing clause of the Copyright Act to expire on July 1, 1986.

Since 1891, the manufacturing clause has been the trade law for the American printing industry. In this historic role, the manufacturing clause has encouraged the development of U.S. printing into the most productive, modern printing industry in the world, employing 1,300,000 hardworking men and women.

If the manufacturing clause is allowed to expire, we believe the employment effect would be devastating. A 1981 U.S. Department of Labor study anticipated a loss of up to 172,000 jobs in the printing industry and a total loss of 367,000 job opportunities throughout our economy if the manufacturing clause expires.

I might add, Mr. Chairman, that that study was undertaken, I am told, with the same methodology with which the International Labor Affairs Bureau of the Department of Labor made its study for the Senate and the House at the time it passed the Trade Act of 1979 following the end of the multilateral trade negotiations.

I was, at that time, the Deputy Under Secretary of Labor in charge of the bureau. The Congress and the Government as a whole accepted that methodology without question, and it seems to me there would be no reason to change that methodology today unless someone had a political reason to do so.

Even with the manufacturing clause, American printing has not escaped the ravaging effects of unfair trade and the overvalued dollar. In fact, imports of books rose 14.5 percent from 1984 to 1985.

At the same time, U.S. exports of books fell 6.3 percent. The deficit is similarly increasing in several other areas of printing as foreign printers exploit several loopholes in the law.

Foreign printers are poised to penetrate our domestic market with their low-wage goods. Our Nation's printing market, with annual sales exceeding \$100 billion, is the largest in the world.

While our domestic industry currently dominates this market, the expiration of the manufacturing clause would dramatically and irreversibly reduce the amount of printed material manufactured by American workers.

In a recent speech before the Book Manufacturers Institute, a printing expert reported on his study of foreign printing. He indicated that the highly developed printing industries in Hong Kong, Malaysia, and Singapore are already producing large quantities of printed material for the United States markets. In addition, printers in China, Indonesia, Thailand, and Korea are also increasing their capability to compete in the American market.

If the manufacturing clause is allowed to expire, in addition, large Japanese firms may decide not to export goods manufactured in Japan, but rather to manufacture in other southeast Asian countries for export to the United States.

Three of the largest Japanese printing companies have already set up printing operations in low-wage countries such as Hong Kong and Singapore. These Japanese-owned plants could soon begin to ship their manufactured goods to the United States if the manufacturing clause is allowed to expire.

In the absence of a manufacturing clause, large American printers could also begin offshore production of printed material. In fact, in his 1981 testimony before the House Judiciary Committee, Subcommittee on Courts, Civil Liberties and the Administration of Justice, Arthur C. Prine, Jr., of R.R. Donnelley & Co., testified, and I will just quote one sentence from his testimony, "But if the manufacturing clause expires, if you force us to export our business to send jobs overseas, we are prepared to do so."

Printing and communications technology are sufficiently advanced to allow increased mobility for our Nation's largest printers. But while printing companies are increasingly mobile, American printing workers cannot follow their jobs to low-wage plants in the Pacific or Caribbean Basin.

Clearly, if the manufacturing clause is allowed to expire, the hardworking men and women will once again have to pay the heaviest price. In order to realize the extent of possible cost to the U.S. Government, the case of Australia may be instructive.

Over a decade ago, Australia opened its markets to competition from low-wage Pacific Basin competitors. The Australian printing industry sustained such heavy losses that the Australian Government now must provide a 33-percent direct subsidy for its printing industry.

Mr. Chairman, we in the Industrial Union Department have watched during the past two decades as industry after industry has been decimated by the consequences of the internationalization of our economy.

It started with textiles, apparel and shoes; it continued with steel and autos and consumer electronics. Today, we are seeing the same pattern with our high-tech industries such as semiconductors and computers.

The result, as you know, has been high and continued unemployment even during a period of ostensible prosperity. Workers' wages in real dollars have steadily gone down for more than 10 years, dragging down with them our standard of living.

Our trade deficit has reached such astonishing numbers that it has affected our entire economy and slowed down the growth that everyone expected us to enjoy.

Mr. Chairman, I must say that listening to the comments of the preceding panel from the Government really astonished me; no acknowledgement by these representatives that we are presently suffering probably this year a trade deficit of close to \$150 billion; that our unemployment levels are much too high for the period we are going through. It has affected every part of our economy.

Certainly, 4 years ago when the Senate passed the bill overwhelmingly and then passed an override by 84 to 9 and the House

final vote was 340 to 42—if the bill was satisfactory to the Congress 4 years ago, today when we are suffering all the grief of an economy which has been severely damaged by international trade, it is not the time to allow the manufacturing clause to elapse.

This is not the time to take steps which would make our trade deficit even worse, to cause further damage to our employment levels, and to further interrupt our growth.

Thank you.

[Mr. Samuel's prepared statement follows:]

more than 400,000 members throughout the United States and Canada.

I am appearing today to testify in favor of S. 1938, which will permit Congress to avoid making the horrible mistake of allowing the Manufacturing Clause of the Copyright Act to expire on July 1, 1986.

For 95 years, the Manufacturing Clause of the Copyright Act has required that most printed material of a preponderantly non-dramatic literary nature and written in the English language by an American author or by an author domiciled in the United States must be printed in either the United States or Canada in order to enjoy the full and unqualified protection of the U.S. copyright laws.

The Manufacturing Clause affects not only books, but also catalogs, directories, periodicals, newspapers, commercial printing, business forms, greeting cards, copyrighted advertising materials and miscellaneous copyrighted material.

EMPLOYMENT EFFECTS OF THE MANUFACTURING CLAUSE

Since 1891, the Manufacturing Clause has been the trade law for the American printing industry. In this historic role, the Manufacturing Clause has encouraged the development of U.S. printing into the most productive, modern printing industry in the world. Our domestic printing industry employs 1.3 million hard-working men and women. The industry is also notable as our Nation's largest and most important sector of small manufacturers.

If the Manufacturing Clause is allowed to expire, the employment effect would be devastating. A 1981 U.S. Department of Labor study anticipated a loss of up to 172,000 jobs in the printing industry and a total loss of 367,000 job opportunities throughout our economy if the Manufacturing Clause expires. At a time when hundreds of thousands of jobs are already being lost in many of our most basic industries, we cannot afford to allow

TESTIMONY OF HOWARD D. SAMUEL, PRESIDENT
INDUSTRIAL UNION DEPARTMENT, AFL-CIO

SUMMARY

I am testifying in general today on behalf of the 6 million industrial members of the AFL-CIO and in particular on behalf of the graphic arts and printing unions affiliated with the AFL-CIO. I am appearing today to testify in favor of S. 1938, which will permit Congress to avoid making the horrible mistake of allowing the Manufacturing Clause of the Copyright Act to expire on July 1, 1986.

For 95 years, the Manufacturing Clause of the Copyright Act has required that most printed material of a preponderantly non-dramatic literary nature and written in the English language by an American author or by an author domiciled in the United States must be printed in either the United States or Canada in order to enjoy the full and unqualified protection of the U.S. copyright laws.

If the Manufacturing Clause is allowed to expire, the employment effect would be devastating. A 1981 U.S. Department of Labor study anticipated a loss of up to 172,000 jobs in the printing industry and a total loss of 367,000 job opportunities throughout our economy if the Manufacturing Clause expires.

Foreign printers are poised to penetrate our domestic market with their low-wage goods. Our Nation's printing market, with annual sales exceeding \$100 billion, is the largest in the world and is clearly a target of foreign printers.

In the absence of the Manufacturing Clause, large American printers could also begin offshore production of printed material. Without the protection of the Manufacturing Clause, these companies - together with foreign printing companies - could soon control the domestic printing market.

As president of the Industrial Union Department, I have fought for the survival of many of our Nation's most basic industries. One industry after another has been targeted and then destroyed by foreign manufacturers. The combination of unfair trade practices and the overvalued dollar has deprived millions of working men and women and their families of their livelihoods. I am determined that printing workers will not become the next victims. Congress should pass S. 1938 and retain the Manufacturing Clause of the Copyright Act.

* * *

BACKGROUND

Mr. Chairman, I am Howard D. Samuel, President of the Industrial Union Department of the AFL-CIO. I am testifying in general today on behalf of the 6 million industrial members of the AFL-CIO and in particular on behalf of the graphic arts and printing unions affiliated with the AFL-CIO, which represent

yet another American industry be victimized by our rising trade deficit.

THE EMPLOYMENT THREAT FROM FOREIGN PRINTERS

Even with the Manufacturing Clause, American printing has not escaped the ravaging effects of unfair trade and the overvalued dollar. In fact, the import of books rose 14.5 percent from 1984 to 1985. At the same time, the export of books fell 6.3 percent. The deficit is similarly increasing in several other areas of printing as foreign printers exploit several loopholes in the law.

Foreign printers are poised to penetrate our domestic market with their low-wage goods. Our Nation's printing market, with annual sales exceeding \$100 billion, is the largest in the world. While our domestic industry currently dominates this market, the expiration of the Manufacturing Clause would dramatically and irreversibly reduce the amount of printed material manufactured by American workers.

In a recent speech before the Book Manufacturers Institute, a printing expert reported on his study of foreign printing. He indicated that the highly developed printing industries in Hong Kong, Malaysia and Singapore are already producing large quantities of printed material for the U.S. markets. In addition, printers in China, Indonesia, Thailand and Korea are also increasing their ability to compete in the American markets.

If the Manufacturing Clause is allowed to expire, large Japanese firms may decide not to export goods manufactured in Japan, but rather to manufacture in other Southeast Asian countries for export to the United States. The three Japanese printing giants - Topan, Dainippon and ChyroPrinting - have already set up printing operations in low-wage countries such as Hong Kong and Singapore. These Japanese-owned plants could soon begin to ship their manufactured goods to the United States if the Manufacturing Clause is allowed to expire.

THE POTENTIAL EMPLOYMENT THREAT FROM LARGE U.S. PRINTERS

In the absence of the Manufacturing Clause, large American printers could also begin offshore production of printed material. In fact, in his 1981 testimony before the House Judiciary Committee's Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Mr. Arthur C. Prine, Jr. of R.R. Donnelly and Sons Co. testified that:

"We at R.R. Donnelly are doing everything we can to maintain the vitality of the U.S. Printing Industry; we are doing everything we can to keep these jobs in the United States. But if the Manufacturing Clause expires, if you force us to export our business, to send jobs overseas, we are prepared to do so. We do not want to export jobs, but if you force us to the wall we are prepared to move. We are large; we are well-staffed; we have the necessary manufacturing and technical resources; and we are well-financed. We can move overseas if you force us to do so."

Clearly, only the largest American printing companies have the ability to manufacture printed goods to be sold in our domestic market. However, without the protection of the Manufacturing Clause, these companies - together with foreign printing companies - could soon control the domestic printing market.

Printing and communications technology are sufficiently advanced to allow increased mobility for foreign printers and for our Nation's largest printers. But while printing companies are increasingly mobile, American printing workers cannot follow their jobs to low-wage plants in the Pacific or Caribbean Basins. Clearly, if the Manufacturing Clause is allowed to expire, hard-working men and women will once again have to pay the heaviest price.

POSSIBLE COSTS TO THE U.S. GOVERNMENT

The expiration of the Manufacturing Clause would also exact a high cost from our Government. A Book Manufacturers Institute

study has indicated that 60 percent of industry workers are either unskilled or semi-skilled workers. These workers would be among the first workers to be affected by job losses. These job losses would be even more tragic because the tight federal budget limits the funds available for unemployment compensation or job training if these workers lose their jobs.

In order to realize the extent of possible costs to the U.S. Government, the case of Australia may be instructive. Over a decade ago, Australia opened its markets to competition from low-wage Pacific Basin competitors. The Australian printing industry sustained such heavy losses that the Australian government now must provide a 33 percent direct subsidy for its printing industry.

We have no reason to suppose that our domestic printers would fare any better in competition with foreign printers or large U.S. printers operating overseas. Clearly, the United States Government cannot afford to follow the Australian example.

THE URGENT NEED TO EXTEND THE MANUFACTURING CLAUSE

As president of the Industrial Union Department, I have fought for the survival of many of our Nation's most basic industries. One industry after another has been targeted and then destroyed by foreign manufacturers. The combination of unfair trade practices and the overvalued dollar has deprived millions of working men and women and their families of their livelihoods. I am determined that printing workers will not become the next victims.

Allowing the Manufacturing Clause to expire would be a grave mistake. That would open the way for the foreign production of everything from telephone books to greeting cards, from dictionaries to calendars. The price for allowing the Manufacturing Clause to expire would be hundreds of thousands of U.S. jobs and hundreds of stricken communities. The price is simply not worth it. I therefore urge Congress to pass S. 1938 and retain the Manufacturing Clause of the Copyright Act.

Senator MATHIAS. Thank you, Mr. Samuel.

STATEMENT OF JAMES J. NORTON

Mr. NORTON. Mr. Chairman, I am James J. Norton, president of the Graphic Communications International Union, an affiliate of the AFL-CIO. Our union has 200,000 members who work in every State in the United States and throughout Canada.

I am appearing today in support of S. 1938, a bill which will extend the manufacturing clause of the Copyright Act. This extension will prevent our Nation from sacrificing its large and dynamic printing industry to the flood of imports from low-wage countries.

The principal concern of my union is jobs. If the manufacturing clause is allowed to expire, many of the 1.3 million printing workers will feel the terrible effects of printing imports and job exports.

In fact, a 1981 U.S. Department of Labor study found that the expiration of the clause would cost 172,000 printing jobs and a total loss of 367,000 job opportunities throughout our economy.

S. 1938 will extend the long and successful history of the manufacturing clause which has, over the past 95 years, helped to develop one of the major industries of our country. There are a number of compelling reasons for Congress to extend the manufacturing clause which I discuss in some detail in my prepared statement.

For the purpose of my oral testimony, I would like to concentrate on what, for my union and its members, is the most important of these—employment. Although U.S. printing is a vibrant and productive industry, it is also highly labor intensive. In fact, 44 percent of all printing costs are directly attributable to wages.

For this reason, the printing industry is highly sensitive to the wage differential between the United States and the Pacific and Caribbean Basin nations. Because wage differentials are at an all-time high, now is the wrong time to allow the manufacturing clause to expire.

Printing industry workers are not highly paid; our wages are modest. However, workers cannot and should not compete with the extremely low wages paid in foreign countries. The majority of the workers in the printing industries are either unskilled or semi-skilled workers. These workers would be the first victims of foreign competition.

What would happen to these workers? The 367,000 lost job opportunities among unskilled and semiskilled workers would be a tragedy to these workers and their families, as well as a severe burden to our economy.

Employment opportunities for these workers are limited and Federal budget constraints restrict funds for unemployment compensation and job training. Without an extension of the manufacturing clause, the outlook for these workers would be bleak.

Mr. Chairman, Congress should also take note of the fact that despite its overall size, printing is our Nation's largest and most important sector of small manufacturers. Of the 50,000 printing businesses, three-fourths of the firms employ 20 or fewer workers.

One after another, many of these small businesses would be forced to close their doors if the manufacturing clause is allowed to

expire. They do not have the resources to move their operations overseas.

Books, catalogs, directories, commercial printing business forms, calendars, and many periodicals would soon be manufactured in low-wage foreign countries and sold in our domestic markets.

Any remaining domestic printers would have to rely almost solely upon extremely time-sensitive printed material. Fair trade is an issue on the minds of most Americans today. Time after time, we have seen foreign nations take advantage of our relatively open trade policies to take jobs away from American workers.

Many of these countries have restrictive trade practices that prevent U.S. products from competing in their markets. Printing is no exception. For 95 years, the manufacturing clause has been the trade law for the printing industry. It has been recognized in our international trade agreements as existing trade law.

Thus, expiration of the manufacturing clause would represent a significant break with American trade law history and practice. Clearly, the United States cannot afford to continually grant trade concessions when its unfair foreign competitors continue their long tradition of restricting the import of American-manufactured goods.

The worsening international trade situation makes it clear that 1986 is the wrong time to allow the manufacturing clause to expire. Because the dollar is extremely overvalued, the wage differential between the United States and its low-wage foreign competitors is exceedingly high. This high differential gives imports a clear advantage.

Despite greater transport costs, the overvalued dollar often allows low-wage Pacific Basin and Caribbean Basin nations to deliver manufactured products at a lower price than our domestic counterparts.

The net effect of our ever-increasing trade deficit on American manufacturing, particularly labor-intensive industries, has been staggering. Largely because of the overvalued dollar, often combined with unfair trade practices, the trade deficit has reached record proportions.

The United States has become a debtor nation for the first time since World War I and America is rapidly losing its manufacturing base. The manufacturing clause remains the most important way to prevent these destructive forces from dismantling our nation's seventh largest industry.

As of 1986, it appears that the United States will become a debtor book nation, importing more books in dollar value than it exports. If the manufacturing clause is allowed to expire, our position in the world economy as a debtor nation will continue.

The future prospects for American printing workers hinge upon what the Congress and the administration do regarding the manufacturing clause before June 30 of this year. If the clause is allowed to expire, foreign printers will quickly flood the American market with printed material manufactured overseas.

Senator MATHIAS. Mr. Norton, I do not like to interrupt you, but you have gone through the yellow and you are on the red.

Mr. NORTON. OK, let me conclude then, Mr. Chairman.

If S. 1938 does become law, the manufacturing clause will continue to provide some job opportunities for more than 1 million workers and their families. The manufacturing clause will encourage our domestic printers to continue to build the most modern, productive printing industry in the world. The action taken on S. 1938 will have an extraordinary impact on hundreds of thousands of hard-working American men and women. Therefore, I urge this subcommittee and the full Senate Judiciary Committee to act swiftly in approving S. 1938, the 55 extension of the manufacturing clause of the Copyright Act.

I thank you, Mr. Chairman, for your indulgence on my override.
[Mr. Norton's submissions for the record follow:]

PREPARED STATEMENT OF JAMES J. NORTON
ON BEHALF OF THE GRAPHIC COMMUNICATIONS INTERNATIONAL UNION

SUMMARY

I am testifying today on behalf of the 200,000 members of the Graphic Communications International Union in support of S. 1938, a bill which extends the Manufacturing Clause of the Copyright Act. This extension will prevent our Nation from sacrificing its large and dynamic printing industry to the flood of imports from low-wage countries.

Since 1891, the Manufacturing Clause of the Copyright Act has required that most material which is preponderantly of a non-dramatic literary nature and is written in English by an American author or by an author domiciled in the U.S. must be printed in the U.S. or Canada in order to be entitled to the full and unqualified protection of U.S. copyright laws. S. 1938 will extend the long and successful history of the Manufacturing Clause.

If S. 1938 becomes law, the Manufacturing Clause will continue to provide job opportunities for more than a million printing workers and their families. The Department of Labor, in 1981, estimated a loss of up to 367,000 jobs if the Clause is allowed to expire. Sixty percent of the industry's workers are unskilled or semi-skilled. Their unemployment would be a tragedy and a severe burden to our economy.

By extending the Manufacturing Clause, tens of thousands of small- and medium-sized businesses will have the opportunity to compete against even the largest American printers for printing contracts. Small businesses are a vital sector of our economy. Extending the Manufacturing Clause is one of the best ways to extend support for American small business.

An extension of the Manufacturing Clause will provide a signal to our trading partners that we are serious about fair trade, and that we will not make a unilateral trade concession.

Although U.S. printing is a productive industry, it is also highly labor-intensive. This makes it susceptible to competition from low-wage countries, especially at a time when the dollar is overvalued.

For these reasons, the extension of the Manufacturing Clause provided by S. 1938 will have an extraordinarily beneficial impact on hundreds of thousands of hard-working American men and women. We urge this Subcommittee and the full Senate Judiciary Committee to give S. 1938 swift approval.

* * * * *

INTRODUCTION

Mr. Chairman, I am James J. Norton, President of the Graphic Communications International Union, an affiliate of the AFL-CIO. I am testifying today on behalf of the 150,000 G.C.I.U. members.

Our members work in every state in the U.S. and throughout Canada.

I am appearing today in support of S. 1938, a bill which will extend the Manufacturing Clause of the Copyright Act. This extension will prevent our Nation from sacrificing its large and dynamic printing industry to the flood of imports from low-wage countries.

The principal concern of my union is jobs. If the Manufacturing Clause is allowed to expire, many of the 1.3 million printing workers will feel the terrible effects of printing imports and job exports. In fact, a 1981 U.S. Department of Labor study found that the expiration of the Clause would cost 172,000 printing jobs and a total loss of 367,000 job opportunities throughout our economy.

Since 1891, the Manufacturing Clause of the Copyright Act has required that most material which is preponderantly of a non-dramatic literary nature and is written in English by an American author or by an author domiciled in the U.S. must be printed in the U.S. or Canada in order to be entitled to the full and unqualified protection of U.S. copyright laws. S. 1938 will extend the long and successful history of the Manufacturing Clause.

REASONS FOR EXTENDING THE MANUFACTURING CLAUSE

1. Employment Impact - Although U.S. printing is a vibrant, productive industry, it is also highly labor-intensive. In fact, 44 percent of all printing costs are directly attributable to wages. For this reason, the printing industry is highly sensitive to the wage differential between the United States and the Pacific and Caribbean Basin nations. Because the wage differentials are at an all-time high, now is the wrong time to allow the Manufacturing Clause to expire.

Printing industry workers are not highly paid. Wages are

modest. However, workers cannot - and should not - compete with the extremely low wages paid by foreign printers and by U.S. printers operating in foreign nations. Quite simply, the loss of the Manufacturing Clause would have its greatest impact on modest-wage working Americans.

Furthermore, job losses would be borne largely by those least able to recover. A Book Manufacturers Institute study indicates that 60 percent of printing industry workers are either unskilled or semi-skilled workers. These workers would be the first victims of foreign competition.

What would happen to these workers? 367,000 lost job opportunities among unskilled and semiskilled workers would be a severe burden to our economy. Employment opportunities for these workers are limited and federal budget constraints restrict funds for unemployment compensation and job training. Without the extension, the outlook for these workers would be bleak.

2. Loss of Small and Medium Printing Businesses - Despite its overall size, printing is our Nation's largest and most important sector of small manufacturers. Of the 50,000 printing businesses, three-fourths of the firms employ 20 or fewer workers. Clearly, small and medium printers comprise the backbone of the U.S. printing industry.

One after another, many of these small businesses would be forced to close their doors if the Manufacturing Clause is allowed to expire. They do not have the resources to move their operations overseas and compete with foreign printers or large U.S. printers with overseas operations.

Books, catalogs, directories, commercial printing, business forms, calendars and many periodicals would soon be manufactured in low-wage foreign countries and sold in our domestic markets. Any remaining domestic printers would have to rely almost solely upon extremely time-sensitive printed material.

Clearly, the expiration of the Manufacturing Clause would have a catastrophic impact upon the tens of thousands of small- and medium-sized printing companies who cannot move their operations overseas.

3. Need for a Fair Trade Policy - The expiration of the Manufacturing Clause would be a unilateral trade concession which would undermine U.S. efforts to develop a fair trade policy. For 95 years, the Manufacturing Clause has been the trade law for the printing industry. It has been recognized in our international trade agreements as existing trade law. Thus, expiration of the Manufacturing Clause would represent a significant break with American trade history.

Although all signatories to the Florence Agreement are forbidden from placing tariffs on books and other cultural or educational printed products, tariffs on catalogs and other printed material are commonplace. For example, the European Economic Community tariff on catalogs currently stands at 6.6 percent. The Canadian tariff on catalogs is currently over 31 percent of the transactional value, scheduled for reduction to 28.6 percent by 1987.

In addition, many foreign nations have set up a maze of non-tariff barriers which severely restrict American exports. Non-tariff barriers include: prepayment of imported goods in Indonesia; the requirement in Singapore that all publications be approved by the Ministry of Culture; extensive consular formalities in the Philippines; new French regulations which require French-language documentation of all imported goods; a variety of restrictions in Canada; and inflation insurance schemes which allow domestic firms in the United Kingdom and Italy to underbid noninsured foreign competitors in world trade.

Clearly, the United States cannot afford to continually grant unilateral trade concessions when its unfair foreign

competitors continue their long tradition of restricting the import of American-manufactured goods. As existing law, the extension of the Manufacturing Clause represents the continuity of this country's historic trade policy. Allowing the Clause to expire would represent an unreciprocated concession to unfair competitors.

4. Effects of the Overvalued Dollar - The worsening international trade situation clearly indicates that 1986 is the wrong time to allow the Manufacturing Clause to expire. Because the dollar is extremely overvalued, the wage differential between the United States and its low-wage foreign competitors is exceedingly high. This high differential gives imports a clear advantage. Despite greater transport costs, the overvalued dollar often allows low-wage Pacific Basin and Caribbean Basin nations to deliver manufactured products at a lower price than our domestic counterparts.

The overvalued U.S. dollar has been a major factor in our ballooning trade deficit. It has contributed to heavy losses in U.S. manufacturing. In fact, up to 75 percent of our present trade deficit has been triggered by the overvalued dollar. Under these conditions, the printing industry, being highly labor-intensive, could expect catastrophic losses.

The dollar's overvaluation results primarily from domestic causes. The high budget deficit and the resultant high real interest rates attract international investors, thereby raising the value of the dollar against foreign currencies. This overvalued dollar has vastly increased U.S. buying power in foreign countries. Thus, the value of foreign wages in terms of U.S. dollars has fallen. This fall has dramatically increased the wage differential between the U.S. and its low-wage competitors.

The net effect upon American manufacturing (particularly,

labor-intensive industries) has been staggering. Largely because of the overvalued dollar, often combined with unfair trade practices, the trade deficit has reached record proportions. The United States has become a debtor nation for the first time since World War I, and America is rapidly losing its manufacturing base. The Manufacturing Clause remains the most important way to prevent these destructive forces from dismantling our Nation's seventh largest industry.

FUTURE PROSPECTS FOR AMERICAN PRINTING WORKERS

The future prospects for American printing workers hinge upon what the Congress and the Administration do before June 30th of this year. The fate of the printing industry and its workers depends upon the future of the Manufacturing Clause.

If the Manufacturing Clause is allowed to expire, the changes in American printing would be broad and sweeping. Foreign printers would quickly flood the American market with printed material manufactured overseas. Since there is very little proprietary printing industry technology in the U.S., a Japanese company -- for example -- could establish a shop in Singapore and purchase the same equipment used in our domestic printing shops. In this way, they could take advantage of wages in Singapore that are a mere fraction of U.S. wages and flood the U.S. with printed materials.

In addition, U.S. printers which presently have overseas operations could expand their overseas plants to print for the American market. Additional large U.S. printing companies could build overseas plants to take advantage of the wage differential. These plants might be able to move offshore, but U.S. workers would not move with them. Once again, we would be exporting American jobs and increasing our trade deficit through the importation of more printed materials.

Once these jobs are lost, we can never expect them to

return. In the last several years, one important manufacturing industry after another has been crippled by imports. Millions of jobs have been lost. Thousands of factories have closed their gates. Worst of all, these industries and jobs do not return to our shores. When industries are lost, when jobs are lost, we should not await their return.

Mr. Chairman, the Manufacturing Clause is already written in such a way as to permit a significant amount of imports of printed materials. In the area of books alone, the first 10 months of 1985 saw the importation of \$468 million worth of books. That's an increase of 14.5 percent over the same period a year before. During that same period, the dollar value of our book exports declined by more than six percent.

There has been a great deal of discussion about the U.S. having become a debtor nation for the first time since the early part of this century. As of 1986, it appears that the U.S. will become a "debtor book nation," importing more books in dollar value than it exports. If the Manufacturing Clause is allowed to expire, our position in the world economy as a debtor nation will be both hastened and solidified.

Without the Manufacturing Clause, the prospects for the 1.3 million American printing workers are bleak. Domestic printers would experience the same dangerous decline in activity which has already destroyed several major U.S. industries. Clearly, we cannot allow this to happen to U.S. printing.

However, if S. 1938 becomes law, the Manufacturing Clause will continue to provide job opportunities for more than a million printing workers and their families. The Manufacturing Clause will encourage our domestic printers to continue to build the most modern, productive printing industry in the world.

By extending the Manufacturing Clause, tens of thousands of small- and medium-sized businesses will have the opportunity to compete against even the largest American printers for printing

contracts. Small businesses are a vital segment of our economy. Extending the Manufacturing Clause is one of the best ways to extend support for American small business.

An extension of the Manufacturing Clause will provide a signal to our trading partners that we are serious about trade. The United States should not continually grant unilateral trade concessions to foreign manufacturers.

The Manufacturing Clause extension will prevent the U.S. printing industry and its workers from being sacrificed because of the overvalued dollar crisis. Clearly, the extension will enable U.S. printing to weather this crisis.

The action taken on S. 1938 will have an extraordinary impact on hundreds of thousands of hard-working American men and women. Therefore, I urge both this Subcommittee and the full Senate Judiciary Committee to act swiftly in approving S. 1938, the extension of the Manufacturing Clause of the Copyright Act.



GRAPHIC COMMUNICATIONS INTERNATIONAL UNION
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VICE PRESIDENT JACK GREER

February 20, 1986

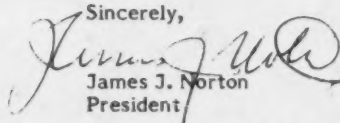
Honorable Charles McC. Mathias, Jr.
Chairman
Senate Subcommittee on Patents, Copyrights
and Trademarks
Senate Committee on the Judiciary
Washington, D.C. 20510

Dear Senator Mathias:

I am pleased to submit the following responses to the additional questions you submitted to me following the January 21st hearing of your Subcommittee on S. 1822 and S. 1938.

Please consider the answers to these questions as being submitted by both myself and by Howard Samuel, President of the Industrial Union Department of the AFL-CIO.

Sincerely,



James J. Norton
President

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Q. 1. As you are aware, many manufacturing industries are currently experiencing difficulties. In fact, by comparison with other industries, publishing and printing are one of the few bright spots. Why then does the printing industry deserve this special protection in our copyright law? Wouldn't it be more appropriate to impose tariff or nontariff barriers instead of holding our authors hostage?

A. 1. As your question indicates, the U.S. printing industry is one of the few bright spots among our major manufacturing industries. Its ability to succeed and provide employment to 1.3 million workers is in large measure a direct result of the Manufacturing Clause's successful history as the fair trade law for the industry.

This success is not a reason to allow it to allow the Manufacturing Clause to expire. Without the Clause, printing would experience the same dangerous and tragic decline in activity

which has already damaged some of our most important manufacturing industries.

The use of tariff or nontariff barriers as an alternative to the Manufacturing Clause would be an open invitation to reprisals by foreign nations. The Manufacturing Clause has been part of the Copyright Act for 95 years. While some foreign countries have expressed displeasure with this provision, it has not been the source of reprisals. The use of any new tariff or nontariff barriers would, however, undoubtedly provoke reprisals. These reprisals would be quite justifiable under the Florence Agreement and various other international trade agreements. For this reason, the Manufacturing Clause is the only printing-related trade provision available to our Government.

Q. 2. Do you think that all intellectual property rights should be conditioned to the artist, author or inventor producing his or her work here? For example, should we require inventors to manufacture their inventions in this country as a precondition for patent protection? If not, why give this benefit to printers?

A. 2. While inventors or others are free to seek passage of trade legislation outside of intellectual property law if they deem such relief to be necessary, the Florence Agreement and other printing-related international agreements effectively make the Manufacturing Clause the only vehicle available to the printing industry.

Q. 3. Why don't you indicate support for S. 1822 in your testimony? After all, it does expand the coverage of the Clause to include all printing. Is it because some countries could become exempt under the provisions of S. 1822?

A. 3. The principal concern of labor is jobs. S. 1822 does not provide any assurance that the jobs of hard-working men and women will receive the same protection under S. 1822 which they presently receive under the Manufacturing Clause and would continue to receive under S. 1938.

S. 1822 might actually encourage the export of American printing jobs. Under S. 1822, any foreign nation could become exempt by guaranteeing copyright protections and entering into a free trade agreement with the United States. Once certified as a trading partner for printed material, the foreign nation can begin manufacturing goods for the American market.

Any nation which was certified under the S. 1822 process could begin to attract American printers. Large American printing companies could: expand their present plants which operate in foreign countries; open new plants in foreign nations; or subcontract printing work to foreign printers. As Mr. Arthur Prine of R.R. Donnelly noted in the 1981 House hearings, R.R. Donnelly, like most large U.S. printers, is prepared to move its operations overseas. Clearly, S. 1822 would give U.S. printers the opportunity to manufacture abroad.

Labor joins with the printing industry in supporting an extension of the Manufacturing Clause. This unity was stated by representatives of both labor and the printing industry during the Subcommittee's hearings. However, organized labor is determined that the extension of the Manufacturing Clause must not foster the export of American printing jobs. S. 1938 achieves this objective in a simple and straightforward manner. For this reason, S. 1938 is supported by labor. In addition, we note that

the Printing Industries of America has asked its members to support identical legislation (H.R. 3465) in the House of Representatives.

Q. 4. In your testimony, you indicate that your main reason for supporting S. 1938 is jobs. If another way could be found to provide protection for the printing industry outside the Copyright Act, how would you view it?

A. 4. The Florence Agreement and several other international agreements effectively close many of the traditional avenues to trade protection for the printing industry. Although the Manufacturing Clause has been grandfathered into these agreements, the exemption granted to the Manufacturing Clause would not extend to any new legislation. In fact, the recent GATT ruling against the United States was based on the argument that a fifteen day lapse in the Clause in 1982 made the Manufacturing Clause "new legislation." Bearing in mind the opposition aroused by this seemingly trivial technicality, the United States could expect vigorous opposition if it enacted any printing industry protection legislation which was truly "new." In addition, those who claim that the printing industry could seek trade relief under Title 19 of the United States Code ignore both the cumbersomeness of these procedures and the unwillingness of the current Administration to use Title 19 authority.

We can see no reason to seek an alternative to a provision of law which has served for 95 years to promote U.S. jobs. The Manufacturing Clause is preferable to alternative trade legislation for the simple reason that it works. Our Nation has built a healthy, competitive printing industry in an environment nurtured by the Manufacturing Clause. To allow the Clause to expire, even with the promise of alternative legislation, would put the jobs of hard-working men and women at a terrible risk.

Q. 5. Could you please comment on two suggestions made by the Register of Copyrights.

The first is the idea of providing some protection against imports of printed material, but within the trade act rather than the Copyright Act. The second is to allow the Clause to expire, but on the condition that it automatically come back into force if the dire consequences predicted by some are realized: i.e., if imports exceed a certain level.

A. 5. Both of these proposals present serious problems. The Florence Agreement and other international agreements effectively preclude the U.S. printing industry from using alternative trade legislation outside of the Manufacturing Clause. For this reason, the protection afforded the printing industry by the Manufacturing Clause cannot be transferred from the Copyright Act to the Trade Act without incurring the very real risk of trade retaliation whose impact could go far beyond printing.

The second proposal, to suspend the Clause until imports exceed a certain level, has two serious flaws. First, it would create an atmosphere of uncertainty which foreign printers could exploit. The threat of the Manufacturing Clause's renewal might create a disincentive for U.S. printers to invest in overseas production facilities. However, foreign printers could use present excess capacity to begin to penetrate our domestic market until the rising level of imports triggers the renewal of the Clause. To the extent that imports penetrate the American market under these conditions of uncertainty, U.S. printing would never

fully recover. This proposal would be an economic experiment which could have grave and lasting effects upon our printing industry and printing workers.

Q. 6. You indicated strong support for the 1981 Department of Labor estimate on job loss. Studies done by the Copyright Office and the ITC show a much smaller impact on U.S. employment from the expiration of the Clause. What accounts for the tremendous difference in job estimates? Are there any factors that the ITC study should have taken into account but did not?

A. 6. The various studies conducted on the job loss impact of terminating the Manufacturing Clause make use of different methodologies and assumptions. In general, the Copyright Office and the ITC claim that the impact would be quite limited. The past three years have proved this view to be unrealistically narrow. Not only are we already achieving the status of a book debtor nation, we are already heavy importers of calendars, illustrated books, and other items. There is also every indication that U.S. publishers will enter into arrangements with foreign printers to publish books and other printed materials for sale in the U.S., should the Manufacturing Clause not be extended. In addition, the printing technology available in the U.S. is available throughout the world, including low-wage countries in the Pacific and Caribbean basins.

No study can predict with certainty what American publishers (or printers) will do in response to a termination of the Manufacturing Clause. What all studies show to date, however, is that there will be a job loss if the Manufacturing Clause expires. It is for Congress to determine if that additional loss of jobs in the printing industry -- coupled with closure of some domestic printing firms and the general shrinkage of that industry -- is significant. We believe an examination of these factors will lead Congress to conclude that the Manufacturing Clause should be extended.

Q. 7. In 1981 when the Labor Department study first appeared, the Copyright Office raised several problems with that study: the printed material mentioned is not all covered by the Clause, a failure to distinguish between publishing and printing jobs, the inclusion of printed material, that while covered is unlikely to move overseas (i.e. daily newspapers), questionable reliance on subjective data, and finally, incorrectly assuming no alternative form of trade protection. Please comment on these points. For your convenience, I have enclosed a 1981 letter from Mr. David Ladd, Register of Copyrights to Representative Kastenmeier explaining these points in more detail.

A. 7. The speculative aspects of the Copyright Office's comments have been addressed in our answer to question 6. No committee of the House or the Senate has required either the authors of the Department of Labor study or their critics to appear for testimony and questioning. In fact, there is evidence both now and in 1981 that the Administration has sought to deter the Department of Labor's economic experts from providing Congress with information on the potential job losses from termination of the Manufacturing Clause.

Q. 8. Several studies have found that printing is less labor-intensive than your testimony indicates. (For example, the International Trade Commission concluded that labor accounts for only 12-19% of the cost of producing a book.) But all seem to

agree that the industry is becoming less and less labor-intensive, as advanced printing technology automates the process more. Doesn't that mean that the advantage enjoyed by low-wage countries is likely to decrease over the years? Doesn't that suggest that now is not the time to write a permanent Manufacturing Clause into law?

A. 8. A Book Manufacturers Institute study, based upon a Frost & Sullivan statistical study, indicates that from 1973 to 1979, between 40% and 44% of sales accrue to labor in the form of wages and fringe benefits. These figures are substantially higher than the ITC figures and suggest a large-scale employment impact if the Clause is allowed to expire.

Regardless of the exact percentage, however, U.S. printing is becoming less and less labor-intensive. In fact, our domestic printing industry is the world leader in productivity. If present trends continue, printing sector employment will continue to contract and, indeed, the Manufacturing Clause may someday become less important to American printing workers. However, that day is still in the distant future. Until that day arrives, a permanent extension of the Manufacturing Clause will keep American jobs from being shipped overseas.

Q. 9. Production technology (in which the U.S. is at the forefront) will help the U.S. printing industry compete. That will help U.S. printing workers - - - but it also may throw some out of work, particularly the majority who are unskilled or semi-skilled. Isn't this drive to automation a much more serious threat to your members' jobs than the prospect of overseas competition? How will this legislation protect you against that loss?

A. 9. The rising productivity of the printing industry has resulted - and will continue to result in - job losses for printing workers. These job losses have been gradual and we have worked with printing companies to manage this transition. Labor has not impeded productivity in the workplace. In fact, we have encouraged and enhanced the rising level of productivity in the U.S. printing industry.

The job losses due to rising productivity, however, are unrelated to the needless, large-scale loss of jobs which would result from an expiration of the Manufacturing Clause. In fact, the ever-increasing amounts of printing imports allowed under the existing Manufacturing Clause pose a far more serious threat to jobs than increased productivity. We should encourage productivity to the extent that it is consistent with collective bargaining agreements which seek to protect vital interests of workers whose jobs will be lost as a result of technology. However, our Nation should prevent unnecessary job losses resulting from unfair foreign competition by extending the Manufacturing Clause.

Q. 10. Do you share the printers' concerns about Canada? If so, why do you support legislation that continues to exempt Canada from the Manufacturing Clause?

A. 10. We do not advocate the preemptory removal of Canada from the Manufacturing Clause. The legislative history which underlies the Canadian exemption should be examined by Congress to determine if this unconditional exemption should be extended.

Q. 11. If the basis for the import threat is low wages in less developed countries, what do you think about S. 1822, which would not take wage levels into account? It's quite possible that the USTR could certify a low-wage country on the copyright and trade barriers standard. That would open the door to the kind of imports that most directly threaten American jobs. Should wage levels be another criterion that the USTR should take into account?

A. 11. Because of its failure to consider the overall U.S. trade position - including the wage differential between the United States and the Caribbean and Pacific Basin countries - S. 1822 is clearly not the most favorable legislation for printing workers. Although adding wage levels as an additional criterion for certification would represent an improvement over the present legislation, we have no confidence in its potential effectiveness. The present Administration, including the USTR, has not established a record of formulating and pursuing a trade policy in the interest of working men and women. We can find no reason to expect fairness from the USTR in any certification procedure, regardless of the criteria.

Q. 12. If the main danger that you see from elimination of the Manufacturing Clause is that U.S. printers will move their operations to low-wage, non-union countries, shouldn't we address that problem directly by providing disincentives in the labor laws or tax laws for such runaway shops? Wouldn't that be preferable to a solution such as the perpetuation of the Manufacturing Clause, which violates our international obligations?

A. 12. The Manufacturing Clause is the best way to address the potential problem of U.S. printers moving their operations overseas. For 95 years, the Manufacturing Clause has prevented this problem. We fully expect that the extension of the Clause will continue to ensure that our domestic printing industry remains strong. It is also unrealistic to expect, in the current legislative and political climate, that adequate protections would be adopted in labor, tax or trade laws prior to the expiration of the Manufacturing Clause on July 1st.

Q. 13. I fully agree with you that part of the reason for our trade problems, and for competition from low-wage countries, is the overvalued dollar. But our overheated currency may not be a permanent problem. Actions are being taken to bring the dollar into balance with other currencies. We must weather this crisis. If we don't succeed, lots of industries will be in terrible trouble.

But doesn't this argue against a permanent extension of the Manufacturing Clause? Wouldn't it be more sensible, if any extension is needed, to make it for a limited period, until the dollar crisis is surmounted? Or should we tie its duration to success in bringing the dollar down?

A. 13. The overvalued dollar presents the most immediate threat to printing and other manufacturing industries. Because the dollar is extremely overvalued, the wage differential between the United States and its low-wage foreign competitors is exceedingly high. This high differential gives imports a clear advantage. The recent effect of the wage differential upon U.S. manufacturing has been staggering. The trade deficit has ballooned to record proportions and the United States is a debtor nation for the first time since World War I. In the face of this threat,

the Manufacturing Clause remains the most important way to alleviate the destructive influence of the overvalued dollar on U.S. printing.

The Administration and Members of Congress have expressed their resolve to take the steps necessary to bring the overvalued dollar down to an acceptable level. If the United States is successful in this effort, then the overvalued dollar crisis may prove to be a temporary condition. However, we have no guarantees of success. Furthermore, unforeseen future economic conditions, perhaps unrelated to the overvalued dollar, may become a new threat to our domestic printing industry. For these reasons, a permanent extension would ensure that U.S. printing can weather this crisis - and any future crisis. Obviously, should Congress determine at a later date that conditions no longer require the Manufacturing Clause, this provision of law can be repealed.

Q. 14. We've heard the argument that the Manufacturing Clause is a bargaining chip that should only be traded away for some concession. But the problem with that analogy is that many countries feel our government had pledged to give up the chip in 1982, and again this year, when we enacted legislation providing for the expiration of the Clause. Other countries have an expectation that the Clause will be allowed to lapse, just as you may have an expectation about a wage increase in the third year of a collective bargaining agreement. Wouldn't you be outraged if the employer treated that expected occurrence as a bargaining chip and sought new concessions? Don't you think our trading partners will feel the same way about the Manufacturing Clause?

A. 14. The U.S. Government is not bound by the expectations of foreign governments in the absence of an international agreement. When extending the Manufacturing Clause in 1982, the U.S. Government did not pledge that it would not be extended in 1986. In fact, the U.S. Government has not entered into any international agreements which required any pledge of non-renewal of the Clause. Any representations made by representatives of the Administration which contradicted the policy of the U.S. Government -- as determined by Congress -- or which sought to make promises regarding the post July 1, 1986 fate of the Clause were clearly not made under the authority of U.S. Government policy.

If any foreign government premised any of its actions on the expectation of non-renewal or felt that the U.S. Government had pledged itself to allowing the Manufacturing Clause to expire, then that government does not understand our legislative process. Expiration dates on legislation have on many occasions been used as a device which provides for renewed debate on legislation of particular significance. Congress passed this law and has every right to consider and pass its extension without deferring to the misinformed expectations of foreign governments.

In the view of labor, the Manufacturing Clause is much more than just a bargaining chip. For 95 years, as the trade legislation for the printing industry, the Clause has been instrumental in building a printing industry which is capable of employing 1.3 million workers. Without the Manufacturing Clause, many of these workers will lose their jobs. Clearly, we should not bargain away - and certainly should not give away - the vital employment benefits provided by this trade law.

Senator MATHIAS. Thank you very much, Mr. Norton.
Mr. Cooper.

STATEMENT OF BENJAMIN Y. COOPER

Mr. COOPER. Senator Mathias, members of the committee, my name is Benjamin Y. Cooper. I am senior vice president of government affairs for the Printing Industries of America. We appear before you today in support of S. 1822. Our reason for supporting S. 1822 and for generally supporting the extension of the manufacturing clause is simple. We are not willing to allow the one remaining negotiating chip in international trade in printing to be lost without some reciprocal gain.

As you know, under the guidance of Senator Thurmond, Senator Leahy, and many others, Congress approved in 1982 extension of the manufacturing clause until June 30 of this year.

Because of the concerns raised relative to the manufacturing clause by some Members of Congress, the administration and the publishing industry, we have spent the past 3 years seeking legislative alternatives to the present law.

We feel that S. 1822 offers the best alternative to the current law and, of course, to the unacceptable alternative of complete elimination of the manufacturing clause. The provisions of S. 1822 are relatively simple.

Those countries which provide adequate and effective copyright protection for U.S. copyright holders and which have no significant nontariff barriers to trade in printing can be exempted from the effects of the manufacturing clause.

Consequently, the countries which would continue to be adversely affected by the clause would be those which are involved in copyright violations and impose unwarranted trade restrictions.

We feel this legislation addresses the major concerns which have been raised about the manufacturing clause. At this point, I wish to enumerate the key areas of concern and our views on how those concerns are addressed by S. 1822.

One, the manufacturing clause is unfair to many of our trading partners. Unfortunately, the current manufacturing clause is an all-or-nothing proposition. Canada is currently the only country which enjoys an exemption. Other countries which perhaps deserve exempt status cannot, under the law, be exempted.

As an example of this problem, England, with which we enjoy good trade relations, a common heritage in observance of copyrights and a regular exchange of educational and cultural material, cannot be exempted under current law. S. 1822 would allow the President to exempt England.

The current manufacturing clause is unfair to U.S. authors. We are unaware of any instance where a U.S. author has not been able to publish due to the manufacturing clause. Further, it seems perfectly logical to us that an author would not wish to have his or her work printed in a country which has a record of copyright violations. S. 1822 takes a major step toward discouraging such piracy.

The manufacturing clause is a violation of the principles of free trade. The key problem in international trade in printing is that the United States is by far the largest market for printed products.

U.S. printing and publishing sales in 1986 will exceed \$100 billion and it is no wonder that non-U.S. companies look eagerly at our shores. Certainly, in the spirit of free trade such competition is healthy. However, the relative health of such competition is directly dependent on the ability of U.S. printers to move into corresponding markets.

Since the U.S. printing industry has not had the tradition of international trade, our experience has been limited. We do not have many companies attempting to market in the Pacific Basin or in developing countries. Instead, we have directed our major trade efforts toward Canada, England, and Western Europe.

In the case of Canada, we find tariff and nontariff constraints on our ability to do business in key product areas. As an example, on January 1 of this year, Canada increased its tariff on catalogs to nearly 31 percent and on advertising material to nearly 26 percent. Our corresponding rates are under 1 percent for catalogs and less than 5 percent for advertising.

Our major area of success in trade has been in books, where the presence of the manufacturing clause enabled the United States to negotiate with the Canadian Government to lower the tariff on books to zero, the same as ours.

I might say that this agreement to lower it to zero was predicated on Canada's adherence to the Florence agreement, which has not been done. In the legislation in 1976 and the report accompanying that legislation, it was recommended that if Canada did not adhere to the Florence agreement that the exemption from the manufacturing clause be withdrawn.

The manufacturing clause is offensive to the world copyright community. In our view, copyrights involve two often competing interests. One is the moral right a creator of a work has over that work; the other is the economics of selling that creation.

In no way does the manufacturing clause impair the moral rights of copyrights. Copyright protection is not removed from an American author who has his or her work manufactured abroad, only the economics of selling the product in a protected market.

I might also point out that the reason we have been successful in getting some countries to improve their copyright protection is the hammer of withdrawing trade opportunities.

Five, S. 1822 expands the scope of the manufacturing clause to include more than preponderantly nondramatic literary material in the English language by an American author.

The purpose of changing the coverage of the manufacturing clause to printed matter was not to expand the coverage of the clause to every word on every piece of paper. The change in phrasing was intended to direct attention to the problems caused to the printing industry and the U.S. Customs Service by the complicated phrase in the language.

Under current language of the manufacturing clause, customs agents literally have to decide if a work is 50.1 percent words or 50.1 percent pictures in order to determine if it is covered or not covered by the clause.

I would like to enter into the record at this point a book which was entered under the manufacturing clause, printed in Hong Kong—"History of the U.S. Navy," which I think, even at a casual

glance, will lead one to realize why that phrase could cause problems for U.S. Customs agents.¹

I would like to also point out that there is a misinterpretation with the——

Senator MATHIAS. You are on yellow.

Mr. COOPER. I am wrapping up.

There is a misinterpretation that the manufacturing clause covers only books. This is not true. The items extend to catalogs, directories, and many other product areas. Of course, many product areas are able to get into the marketplace under the manufacturing clause.

As an example of another item which I would like to present to the committee, the Library of Congress 1986 engagement calendar which was printed in Japan.²

That concludes my remarks. We certainly encourage the committee to favorably consider S. 1822.

[Mr. Cooper's submissions for the record follow:]

¹ Book has been placed in subcommittee files.

² Retained in subcommittee files.

PREPARED STATEMENT OF BENJAMIN Y. COOPER
ON BEHALF OF THE PRINTING INDUSTRY OF AMERICA, INC.

Mr. Chairman and Members of the Committee, my name is Benjamin Y. Cooper. I am Senior Vice President of Government Affairs for the Printing Industries of America, a federation of state, local and national associations in the printing and graphic arts industry. I also appear before you today on behalf of the National Association of Printers and Lithographers. The combined membership of the Printing Industries of America and the National Association of Printers and Lithographers is approximately 16,000 firms in the United States. The printing industry is the nation's largest manufacturing industry in terms of numbers of establishments with over 50,000 firms and an employment of 1.3 million persons. Despite its large size the printing industry remains inherently a small business with the average firm having fewer than 20 employees.

We appear before you today in support of S. 1822, legislation which would amend Section 601 of Title 17 of the U. S. Code known as the Manufacturing Clause. We want to express our appreciation to the Chairman for providing these hearings and giving us an opportunity to appear before you. Our reason for supporting S. 1822 and for generally supporting the extension of the Manufacturing Clause is simple. We are not willing to allow the one remaining negotiating chip in international trade in printing to be lost without some reciprocal gain. I hope the comments which follow will lead you to that same conclusion.

The Manufacturing Clause is certainly not a new issue. It has been part of the Copyright Law since 1891, although through the years its scope has been narrowed significantly. The most recent significant change in the Manufacturing Clause occurred in 1976, where in addition to securing certain other changes opponents of the issue were successful in amending the law to provide for the expiration of the Clause on June 30, 1982. We were opposed to that expiration date in 1976 and supported legislation in 1981 and 1982 to have that expiration date removed. As you know, under the guidance of Senator Thurmond, Senator Leahy, and many others, Congress approved in 1982 an extension of the Manufacturing Clause until June 30, 1986. That legislation was vetoed by President Reagan, a veto that was subsequently overridden by a rather wide margin in both houses of Congress. The veto override vote won in this body by 84 to 9.

Because of the concerns raised relative to the Manufacturing Clause by some members of Congress, the Administration, and the publishing industry, we have spent the past three years seeking legislative alternatives to the present law. We feel that S. 1822 offers the best alternative to the current law and of course to the unacceptable alternative of complete elimination of the Manufacturing Clause. Our intention in working with Senator Thurmond toward the development of S. 1822 was to address not only our concerns but the concerns of those who favor elimination of the Manufacturing Clause. The provisions of S. 1822 are relatively simple. Those countries which provide adequate and effective copyright protection for U. S. copyright holders and which have no significant non-tariff barriers to trade in printing can be exempted from the effects of the Manufacturing Clause. Consequently, the countries which would continue to be adversely affected by the Clause would be those which are involved in copyright violations and impose unwarranted trade restrictions. We feel this legislation addresses the major concerns which have been raised about the Manufacturing Clause.

In my statement I wish to address two specific areas. One would be to indicate the areas of concern that have previously been raised by those who would favor elimination of the Manufacturing Clause, and address those concerns in terms of S. 1822. Secondly, I wish to highlight the effect of the Manufacturing Clause on those segments of the industry not directly covered by the Manufacturing Clause. At this point we wish to enumerate the key areas of concern and our views on how those concerns are addressed by S. 1822.

1. The Manufacturing Clause is unfair to many of our trading partners.

Unfortunately, the current Manufacturing Clause is an all or nothing proposition. Canada is currently the only country which enjoys an exemption. Other countries which perhaps deserve exempt status cannot under the current law be exempted. As an example of this problem England, with which we enjoy good trade relations, common heritage and observance of copyrights, and a regular exchange of educational and cultural material cannot be exempted under current law. S. 1822 would allow the President to exempt England.

2. The current Manufacturing Clause is unfair to U. S. authors. We are

unaware of any instance where a U. S. author has not been able to publish due to the Manufacturing Clause. In addressing this issue we are aware that the problem of copyright piracy is a paramount concern to U. S. authors. It seems perfectly

logical to us that an author would not wish to have his or her work printed in a country which has a record of copyright violations. S. 1822 takes a major step toward discouraging such piracy.

3. The Manufacturing Clause is a violation of the principles of free trade. This is obviously a major concern of the proponents and opponents of the Manufacturing Clause, so we should examine the current state of trade in printing. The printing industry traditionally has not been viewed as a major participant in international trade. That situation is changing. In 1985 the value of the U. S. printing industry's exports was \$1,415,600,000 while during the same year we imported \$1,049,300,000 worth of goods, leaving a favorable balance. The single biggest product component of our international trade is books, the product most affected by the Manufacturing Clause. In recent years trade has become a major concern for U. S. printers, primarily from the standpoint of the increased activity in the U. S. of foreign printers. Printing in several major market areas has been all but lost to U. S. printers due to a rising level of imports. The key problem in international trade in printing is that the U. S. is by far the largest market for printed products. U. S. printing and publishing sales in 1986 will exceed \$100 billion and it is no wonder that non-U. S. companies look eagerly at our shores. Certainly in the spirit of free trade, such competition is healthy, however, the relative health of such competition is directly dependent on the ability of U. S. printers to move into corresponding markets.

Since the printing industry has not had the tradition of international trade our experience has been limited. We do not have many companies attempting to market in the Pacific basin or in developing countries. Instead, we have directed our major trade efforts toward Canada, England, and Western Europe. In the case of Canada we find tariff and non-tariff constraints on our ability to do business in key product areas. As an example, on January 1st of this year, Canada increased its tariff on catalogs to nearly 31 % and on advertising material to nearly 26 %.

Our corresponding rates are under 1 % for catalogs and less than 5 % for advertising. Our major area of trade success has been in books where the presence of the Manufacturing Clause enabled the U. S. to encourage the Canadian government to lower the tariff on books to zero, the same as ours.

As the U. S. printing industry has begun to explore other markets we find barriers instead of open arms. We seem to be the only house in town with unlocked doors.

4. The Manufacturing Clause is offensive to the world copyright community. In our view copyrights involve two often competing interests. One is the moral right a creator of a work has over that work. The other is the economics of selling that creation. In no way does the Manufacturing Clause impair the moral rights of copyrights. Copyright protection is not removed from an American author who has his or her work manufactured abroad, only the economics of selling the product in a protected market.

We are aware that the Chairman has expressed interest in U. S. participation in the Berne Union. We are also aware that concern has been raised that the Manufacturing Clause is inconsistent with the principles of the Berne Union. We have been advised that, although the Manufacturing Clause violates the spirit of the Berne Union, it is by no means the only or certainly by no means the major impediment to U. S. participation in the Berne Union. Other matters seem far more significant, such as the registration of copyrights required by this country and prohibited under the Berne Union. It also occurs to us that S. 1822 in many ways embodies the spirit of the Berne Union by putting additional pressures on governments to adequately and effectively protect the copyrights of citizens other than their own.

Regardless of whether the Manufacturing Clause is a problem for the world copyright community, we fail to see the justification for exposing one of our largest industries to a significant economic risk for the sake of participation in a copyright agreement which we have avoided for its entire existence.

5. S. 1822 expands the scope of the Manufacturing Clause to include more than "preponderantly non-dramatic literary material in the English language by an American author." The purpose of changing the coverage of the Manufacturing Clause to printed matter was not to expand the coverage of the Clause to every word on every piece of paper. The change in phrasing was intended to direct attention to the problems caused the printing industry and the U. S. Customs Service by the complicated phrase "preponderantly non-dramatic literary." Under the current language of the Manufacturing Clause Customs agents literally have to decide if a work is 50.1 % words, or 50.1 % pictures in order to determine if it

is or is not covered by the Manufacturing Clause. We feel that this standard is too narrow and too subject to interpretation. By including the phrase "printed matter" we certainly encompass far more than books and other items that are covered. However, the course of the legislative process gives an opportunity to review those specific items for which special status might be granted. I have with me today an example of the type of problem that Customs agents encounter in considering products for exemption from the Manufacturing Clause.

At this time I would like to address the concerns of that part of the industry not directly covered by the Manufacturing Clause. First of all it should be noted that the current Manufacturing Clause is not limited to books. Although books are far and away the single biggest product area affected by the Manufacturing Clause, the current language of the Clause is not so limiting. The phrase "preponderantly non-dramatic literary material in the English language by an American author" simply means that the item contains more words than pictures. Examples of other items that could be covered under the Manufacturing Clause are catalogs, directories, advertising material, periodicals, particularly those which we would refer to as scholarly publications, and literally any other product meeting the standards of the Clause. Our industry is concerned, however, not only about those products that are directly affected by the Clause but those secondarily affected. As so often happens in an industry such as printing, the loss of a market tends to compress the industry. It is not simply a case of a loss in the book printing market, therefore a book printer goes out of business. While many of the book printers in this country undoubtedly would go out of business if the Manufacturing Clause expired, other book manufacturers would be able to survive by changing product lines and taking work from those companies currently not printing books. In fact, the Department of Labor study conducted in 1981 concluded that the major long term effect on the printing industry would be in the medium to small commercial printing firms which would be least able to adapt to the competition from those companies that switch markets. In our industry we would see the largest companies surviving the loss of the Manufacturing Clause, the very smallest companies relatively unaffected, with the medium-sized companies dramatically affected.

If the Manufacturing Clause was allowed to expire in the way outlined in S. 1822, that is on a country by country basis with an opportunity to gain some concessions

from those countries, not only would we minimize the impact on the industry but in some cases we would be able to gain sufficient markets through these concessions to equalize the expected loss of the book market. As an example of this ability to negotiate, we have strong concerns about the current state of trade between the United States and Canada. As previously mentioned, Canada has raised its tariffs on two of the major product areas traded between the two countries. In addition to those tariff barriers, the Canadian government imposes an array of non-tariff barriers ranging from different tax treatment for Canadian companies which advertise in Canadian versus U. S. printed publications, licensing fees for U. S. printed products to be marketed in Canada, and restricted markets in terms of the number of Canadians that can be sent U. S. printed publications. Although the United States still enjoys a favorable trade balance in printing and enjoys a favorable trade balance with Canada, that balance is shifting dramatically and if the trade in books is removed, the balance would not be favorable.

Mr. Chairman, the Manufacturing Clause is a serious issue for us. It is one that we have addressed for many years, and it is one that has also occupied the concern of members of Congress and the publishing industry for many years. We are seeking a long term solution to the problem. It is not our wish to continue to stand in opposition to the publishing industry or the authors of this country. The fact is, however, that the U. S. printing industry has a problem. We have explored many alternatives to addressing that problem. We are frankly uncomfortable with the current trade solutions available under the Trade Act and we feel that while the Manufacturing Clause may not be a perfect law, it does provide a measure of assurance that the U. S. printing industry and the book printing industry specifically will not be lost. We see S. 1822 as a way to allow the Manufacturing Clause to expire while at the same time gaining some reciprocity that will benefit the industry. S. 1822 provides an orderly transition from the current situation to the perhaps inevitable situation of no Manufacturing Clause. We are gravely concerned that to precipitously remove the Manufacturing Clause on midnight, June 30th of this year would be extremely harmful to the U. S. printing industry and we feel unnecessarily so. We are certainly familiar with S. 1938 introduced by Senator Leahy and many of his colleagues. We certainly support the aims of that bill and feel that it would certainly give the type of protection we are seeking. We do not come before you today in opposition to that legislation, we simply state our preference for S. 1822.

Attached to this testimony are several items which may be of interest to the Committee including excerpts from the International Trade Commission study of the Manufacturing Clause.

We urge your favorable consideration and look forward to the opportunity to work with you to assure the continued viability of the nation's largest small business industry.

INTERNATIONAL TRADE IN PRINTED PRODUCTS:
SELECTED TARIFF AND NON-TARIFF BARRIERS

Canada

Non-tariff Barriers

Canada has a wide array of non-tariff barriers applied to imports of U.S. printed products, including the following:

- Canadian postage rates are higher on those publications manufactured abroad and distributed within Canada than rates on Canadian manufactured publications.

- Canadian advertisers may not deduct as a business expense the cost of advertising in non-Canadian publications.

- Canada bars entry to foreign publications that contain over 5 percent of their total ad lineage aimed specifically at the Canadian market.

- Foreign publications which make a split run to include Canadian-only regional advertising are prohibited from entry.

- U.S. exports to Canada of printed items which have been manufactured in whole or in part from Canadian raw materials are subject to a higher valuation for customs purposes than those printed products manufactured with non-Canadian materials.

- Canada currently has a federal sales tax of 9 percent payable at the time of importation or at the time the goods are taken out of bond for consumption. Exempted from this tax are educational books without advertising, printed matter of a religious nature, and certain goods for educational institutions.

Tariff Barriers

Books

Canada has agreed to zero-rate the duty on books until July 1, 1986. Canada has not signed the Florence Agreement.

United States

The U.S. has no corresponding barriers.

The U.S. is a signatory to the Florence Agreement through which books are allowed free entry into the U.S.

Catalogues

As part of the most recent GATT round, Canada agreed to lower its tariff on catalogues to 20% ad valorem by 1987. Canada also agreed to change from an evaluation of imports from "fair market value" to "transactional value," effectively lowering the valuation.

The U.S. tariff on catalogues assessed at transactional value is 0.6%, scheduled for reduction to 0.0% in 1987.

Subsequently, Canada has decided that due to the change to transactional value they would increase tariffs. Consequently, the tariff on catalogues currently stands at 31+ percent, scheduled for reduction to 28.6 percent by 1987.

European Economic Community

United States

Non-tariff Barriers

Belgium — The Government of Belgium controls by decree the prices at retail for books, magazines, and periodicals.

No corresponding non-tariff barriers.

France — Among the NTB's in France is the requirement that documents accompanying all imported goods and services be written in French or be accompanied by a French translation if such documents are in another language. This requirement applies to marking and labeling, as well as to manuals accompanying imported commodities. Enforcement of this regulation, which was announced by the French Government on October 21, 1982, is expected to add significantly to the costs of exports to France, with possible delays in French customs clearance for those imports not meeting the requirements. France also prohibits imports of books in French that are printed outside of France, unless the names of the printer and publisher are shown as prescribed by French copyright laws. Discretionary licensing is imposed on imports of newspapers, journals, and periodicals — issued other than daily and in French.

The following controls are exercised over most imported publications:

1. A certificate of origin has to be produced, indicating the title, the location, and the date of printing, as well as the number of volumes for each title.
2. The import of such publications for consumption, warehousing, or temporary admission are to be cleared only through specific customs ports of entry.
3. The French Air and Customs Police Administration may prohibit from importation any publications which they judge to be—
 - a. Fraudulent imitations.
 - b. Contrary to morality for consumption, distribution, exhibition or lease.
 - c. Pernicious for youth.
 - d. Advocating abortion.
 - e. Writings forbidden by the French Ministry of the Interior.

Federal Republic of Germany (West Germany).

— West Germany maintains a strong censorship code which prohibits the importation of material that (1) endangers the political order or the democratic constitution, or glorifies and encourages violence and race hatred; (2) constitutes a danger to young people; or (3) endangers the security of the allied armed forces in West Germany. Most imports of printed matter are subject to an import equalization tax (turnover tax) of 13 percent.

Italy — Italy has an export inflation insurance scheme whereby insured Italian firms might be able to underbid noninsured foreign competitors in world trade. The Italian Government encourages foreign publishers manufacturing with Italian printers. The foreign publisher may take up to 3 months to remit payment to the appropriate bank, whereas the printer is paid almost immediately by the bank. Italy also applies to all imports an administrative duty of 1/2 percent above the ordinary customs duties.

The Netherlands — Although it is not a direct barrier to trade, printers in the Netherlands may receive a raw-material subsidy in the form of lower paper prices if the finished printed product is for the export market.

The United Kingdom — The United Kingdom prohibits the importation and sale within the U.K. of copies of the King James version of the Bible that have been manufactured (printed and bound) outside of the U.K., as ordered by Royal Patent. The United Kingdom also imposes certain restrictions with regard to the importation of advertising material and/or the placement of print media advertisements which could be construed as a form of trade barrier.

Additional barriers include: an export inflation insurance scheme, whereby insured British firms might underbid noninsured foreign firms; a Government procurement system which gives preference to Commonwealth suppliers; and, a value-added tax (currently 15 percent) levied on imported goods and services, including printed matter relating thereto, as well as on such goods and services supplied in the United Kingdom "by a trader, craftsman, or member of the liberal professions, provided his annual turnover exceeds a specified amount."

Greece — Greece has a monopolistic state trading system which creates the possibility for discrimination as to imports. It also applies a limit on terms of credit in connection with all imports, as well as a turnover tax which amounts to a 25 percent surcharge, based on rates for domestic products, and a luxury tax that benefits domestic goods.

The Pacific Basin

Japan — Japan encourages exports by means of an Overseas Market Development Reserve Fund program which allows companies to set aside a tax-free reserve fund for export market development.

The Japanese discourage imports by credit restrictions which lead to higher financing rates for the purchase of imports than for domestic goods. Although not imposed by the Government, Japanese importers often employ a special exchange rate on foreign books and periodicals which increases the effective retail price of such publications by approximately 30 percent over their

"normal" price. The importers argue that the higher valuation is necessary to cover the full costs of handling foreign publications, but the net effect places such publications at a price disadvantage vis-a-vis those of Japanese manufacture.

Japan, which requires import licenses on various imported goods, allows imports of printed matter under the "import declaration system."

Other Pacific Basin Countries

Major nontariff barriers to trade include extensive consular formalities in the Philippines; a requirement for prepayment of imported goods in Indonesia; and the requirement in Singapore that all publications be approved by the Ministry of Culture.

Value-Added Tax

Countries of the EC add VAT to all products (import and domestic); however, for imports, the tax is charged on transaction value, freight, insurance, and tariff at the following rates:

Luxembourg	10%
Germany	14%
United Kingdom	15%
Italy	18%
Netherlands	18%
France	18.6%
Belgium	19%
Greece	20%
Denmark	22%
Ireland	30%

United States

No corresponding tax other than state sales taxes ranging from 0% to 6%.

Tariff Barriers

Books

As signatories to the Florence Agreement, EC members have no tariffs on books or other cultural or educational printed products, including pre-press items.

Also signatory to the Florence Agreement.

Catalogues

The EC tariff on books currently stands at 6.6%.

The U.S. tariff on catalogues is 0.6%.

Import/Export Figures

	<u>1984 (millions)</u>
<u>Books:</u>	
U.S. Imports	\$491.5 (479.1 units)
U.S. Exports	\$624.8 (249.8 units)

Catalogues:

U.S. Imports \$ 85.1 million

(Canada accounts for approximately 45% of U.S. imports)

U.S. Exports \$ 19.2 million

WRITTEN QUESTIONS FOR BENJAMIN Y. COOPER

SUBMITTED BY SENATOR MATHIAS

1. You testify that you are "uncomfortable" with Trade Act remedies now available to the printing industry. Assuming you are correct about the dire consequences that expiration of the manufacturing clause would cause, why are existing trade remedies insufficient to protect the printing industry?

Have the printers or the unions taken their case for unfair foreign competition to the government? If so, what was the response?

2. Section 201 of the 1974 Trade Act only requires demonstration that import penetration is causing or threatening to cause substantial damage to a domestic industry. When the United States ratified the Florence Agreement didn't we reserve the right to still use 201 relief? Why couldn't you apply for section 201 relief if the damage you predict actually happened or was imminent?

3. In your testimony, you base your support for S. 1322 on being able to use the manufacturing clause as a bargaining chip to improve copyright standards and remove trade barriers to printing. Don't you think that because the clause is a GATT violation this removes the bargaining potential of the clause, since countries now have cause to retaliate even without trading away any barriers? Would resorting to section 201 make retaliation any more likely?

4. In material provided by the printing industry listing nontariff trade barriers, I note the inclusion of certain censorship laws. France for example, is listed as prohibiting the importation of publications that are "contrary to morality of consumption, distribution, exhibition or lease" and materials that are "pernicious for youth." Yet no indication is given of any U.S. nontariff trade barriers in this area. Don't our prohibitions on importation of printed material under the Foreign Agents Registration Act constitute the same type of nontariff barrier? If so, how do you propose we change our law? Should other countries retaliate against us because of these types of "barriers"? If not, why do you include censorship laws in the list of nontariff trade barriers?

5. Isn't the manufacturing clause a "material nontariff trade barrier"? If another country adopted one, wouldn't that prevent them from being exempted from ours, under S. 1322? Isn't there an element of hypocrisy in insisting on protection for our printing industry while denying it in other countries? Won't enactment of S. 1322 lead to more such barriers around the world, rather than fewer?

6. Why does the printing industry deserve this special protection in our copyright law? Wouldn't it be more appropriate to impose tariff or nontariff barriers instead of holding out authors hostage? Do you think that all intellectual property rights should be conditioned on the artist, author or inventor producing his work here? For example, should we require inventors to manufacture their inventions in this country as a precondition for patent protection? If not why give this benefit to artists?

7. Could you please comment on two suggestions made by the Register of Copyrights.

The first is the idea of providing some protection against imports of printed material, but within the trade act rather than the copyright act. The second is to allow the clause to expire, but on the condition that it automatically come back into force if the dire consequences predicted by some are realized: i.e., if imports exceed a certain level.

8. In your testimony you give a rather novel interpretation to U.S. copyright law by separating an author's moral rights from his or her economic rights. Is this view justified, particularly because under U.S. law the economic rights attached to copyright were supposed to

support the incentive to create and the ability to disseminate the work?

9. The standards in S. 1822 for certification by USTR have come in for criticism. What is needed to prove "adequate and effective" copyright protection? Does a country that adheres to the Berne Convention automatically qualify? How about a country, like the U.S., that is not a party to Berne, but to the Universal Copyright Convention? What about a party that has a copyright treaty with the U.S.? Is that enough, or can the USTR second-guess the judgment of the President and the Senate that copyright protection in that country is adequate?

10. Similarly, as to nontariff trade barriers, the concept is rather elastic. Depending on the interpretation, most of our major trading partners could be in --- or out. Clearly, there needs to be more specificity in our instructions to the USTR --- or should we give him a blank check? What are your thoughts on how this standard ought to be interpreted?

11. The main reason given for the ability of foreign printers to penetrate our market is the wage differential. Won't the exemption of low-wage countries from the requirements of the manufacturing clause eventually open our printing industry to foreign competition that you claim will cripple it?

12. Should wage levels or labor practices be a factor in the USTR's certification? Or should other means be used to prevent the loss of jobs to low-wage countries?

13. Since, as we all seem to agree, this is a trade issue in copyright garb, the question of the economic health of the industry is more relevant here than it is in some other issues before the subcommittee. Isn't the printing industry doing pretty well? I note that R. R. Donnelly ranks among the top third of major corporations in profitability over the past five years, and in the top sixth in earnings growth. What about the rest of the industry?

14. In particular, isn't the industry doing pretty well in terms of exports? We are the leading printing exporter in the world, and have a favorable balance of trade in this sector, even though the U.S. is the biggest market. Canada, by contrast, is the biggest importer of printed material in the world. Are the nontariff trade barriers in this field really such a serious threat to exports that we should enact special legislation, in violation of our international obligations, in order to try to get them lowered? Is the printers' case more compelling than that of semiconductors or agricultural products?

15. The Copyright Office suggests that publishers are now making relatively little use of the option available to them to print certain books overseas (those now exempt from the manufacturing clause). Do you agree? Doesn't this suggest that your predictions of what will happen if the manufacturing clause expires altogether may be a little exaggerated?

16. The Register of Copyrights tells us in his testimony that basically the same arguments were made in the mid-1960's, when this issue was discussed as part of the copyright revision effort. Since then, the manufacturing clause has been substantially liberalized. Yet the industry appears to be reasonably robust, and jobs have not been lost to imports. Only a relatively small amount of the printing business is affected by the clause that is due to expire. On what basis should we accept your prediction of dire consequences? Is there new information that changes the picture from the one that has been painted for 20 years?

17. The publishers contend that there is a real price sensitivity in the area of art and children's books. They contend that including these "mostly pictorial" works under the clause will either price these books out of the market, or else publishers will use foreign authors and illustrators in order to retain copyright and stay outside the provisions of the clause. Please comment.

18. Do U.S. printers currently have the capacity to produce multicolor, high quality childrens art books at competitive prices? If not, why not and where does the competition for high quality multicolor works come from? Is there a large wage differential between these countries and the U.S. and if there is, is it due to the overvalued dollar or is it chronic?

19. In your testimony you mention that S. 1922 would allow certain countries to be exempt from the clause. What countries besides the United Kingdom would probably be exempt?

20. I understand that it was the U.S. and Canadian printers who in 1976 pushed for exempting Canada from the requirements of the manufacturing clause. Why do you support a bill that now includes Canada?

21. Didn't Canada lower its duties on books even though it did not sign the Florence Agreement? Further, the printing industry has expressed a lot of concern over Canadian nontariff barriers on printed materials, particularly catalogues. Did you push the Canadians to lower these in 1976 when you negotiated the Toronto Agreement? Did you use the manufacturing clause back then as a bargaining chip?

22. There are real grievances with respect to Canada, both on the trade side and the copyright side. But aren't there adequate remedies under existing law that will help put pressure on Canada to respond to these problems? If Canada is the primary concern, why should we address it by passing a statute that may poison our trade and copyright relations with nearly every other country in the world?

23. Several other witnesses have commented on the uncertainty that S. 1922 would bring to the printing and publishing industries. A country's status with respect to the manufacturing clause could be unclear, or could change overnight. That's not conducive to stability in the industry. For that reason, even some opponents of the manufacturing clause would prefer "the devil they know" to the uncertainties of your proposal. After ten years in its current form, the manufacturing clause is at least a known quantity. Why are these parties -- including organized labor -- wrong? Why should we enact a "new, improved" manufacturing clause? If we do, how can we build in more predictability and certainty?

24. Because S. 1922 would bring under the manufacturing clause a great deal of material -- for example, advertising material, maps, sheet music -- not now covered, its enactment could have a major impact on other copyright-related industries besides book publishing. Its repercussions could be felt in Silicon Valley, on Madison Avenue, and on Tin Pan Alley, and elsewhere as well. Has there been any assessment of the impact of this legislation on employment, profitability and growth in these affected industries, and on the effect on consumers of the products of these industries?

25. You suggest that the current manufacturing clause is difficult for the Customs Service to enforce. Can you give some examples of problems that Customs has encountered? Wouldn't S. 1922 require Customs to examine imported items -- e.g., t-shirts, advertising material, matchbooks, computer equipment -- for printed material in the English language? Wouldn't that be even more burdensome?

26. One troubling aspect of S. 1922 is the broad sweep of the phrase "printed material in the English language." This could include many items not now within the manufacturing clause, including sheet music, maps, advertising matter, foreign language works, and others, as long as they contained a printed word or two in English. I'm also concerned about the fact that the entire work, not just the English language portions, would be affected. Thus, there might be no copyright protection for a photograph because of its caption; for a tune because of its lyrics; even, conceivably, for a phonograph record because of the album cover. It might even be that a computer program, in a Read-Only-Memory semiconductor chip, would lose protection because the copyright notice engraved on the chip was in English. And these are only some of the possibilities.

I know many of these effects were not intended. Please tell me the intended effects. What material does this bill seek to reach that is not now covered by the manufacturing clause? What can be done to exclude the material you do not seek to cover?

RESPONSES OF BENJAMIN Y. COOPER

1. As I indicated in our testimony, the U. S. printing industry does not have vast experience in the area of international trade. To advise us in this area we have retained competent trade counsel. That counsel has indicated to us that there are a number of problems associated with the various trade remedies available to industries such as ours which may face significant competition in a product area. Not the least important of which is the cost to the industry of bringing the case to the government, compared to the relative chance of success. As I am sure you are aware, legal fees for bringing a case before the International Trade Commission can be quite high, and since more industries have failed than have succeeded in their endeavors, this fact must be taken into account.

Certainly the industry has attempted to take its case before the government. We have met with the International Trade Commission and participated in their study on the Manufacturing Clause. We have communicated and met several times with representatives of the U. S. Special Trade Representative's office to discuss our problems. To date there has been no positive response of any type from any of these agencies.

2. While the U. S. did reserve the right to apply for Section 201 relief under the Manufacturing Clause, we feel this would be a long shot at best. In order to invoke the provisions of 201 under the Florence Agreement, it would be necessary for the United States to, in effect, withdraw from a significant portion of the treaty. It is our opinion that the actual effect of the 201 relief issue is that we would have to have experienced substantial difficulty in order to apply for 201 relief. It is regrettably the character of our industry that by the time you experience substantial problems, many of the companies experiencing the problems will have already succumbed economically.

Additionally, it is not our desire to control the import and export of printing through tariffs. We would much prefer to have no tariffs on books or other printed material and we would be perfectly content to have other countries of the world follow the same path.

3. It is our very strong opinion that the Manufacturing Clause is a GATT violation due to the failure of our U. S. Trade Representative's office to properly handle the issue before GATT. Our negotiators committed during the Tokyo Round that the Manufacturing Clause would expire. This was done without consultation with the industry and, frankly, was done without reference to the legislative history contained in the Manufacturing Clause extension. Subsequently, when a complaint was filed against the U. S. over the extension of the Manufacturing Clause in 1982, it is our firm opinion of that case that the issue could have been more aggressively argued. Certainly the United States is not alone in GATT violations. Further, we are not anticipating retaliation in a wide variety of printed product areas because the United States is the market for printing, and it has been more important for those countries to have access to the U. S. market than for the U. S. to have access to their market. The lone exception to this, of course, is Canada which we contend is already of questionable standing with regard to GATT.

4. As indicated in our testimony, we did not develop the list of non-tariff trade barriers. That list of non-tariff trade barriers was developed by the International Trade Commission. I have no direct knowledge of the implications of the Foreign Agents Registration Act and would have no expertise in recommending any changes to that law.

5. The Manufacturing Clause certainly may be considered a material non-tariff trade barrier. It seems perfectly logical to us that the United States would be very willing to allow its material non-tariff trade barrier to be removed if other countries would likewise remove their material non-tariff trade barriers. Should the Manufacturing Clause expire on June 30 of this year, the U. S. would have

removed its material non-tariff barrier, while no action would have been taken against the non tariff barriers of other countries. Not only do we not regard it as hypocrisy to continue the Manufacturing Clause, we would regard it as the height of folly to allow our barrier to be removed without asking the same in return from other countries.

6. We have never suggested that the Manufacturing Clause is the ideal solution to the printing industry's potential trade problems. We have only indicated that the Manufacturing Clause is a solution that is in existence and has afforded us a measure of protection, and that it should not be allowed to expire without some reciprocal gain from those countries that likewise impose barriers. If a similar provision were in the patent law requiring inventors to manufacture their inventions in this country as a pre-condition for patent protection we might support in that instance that that provision not be eliminated without similar reciprocal concessions by other countries. Please recognize what we are discussing with the Manufacturing Clause is not new law, but the continuation of a law that has been on the books of the United States since 1891.

7. The Register of Copyrights proposal had many attractive features to it, however, the notion of having the Manufacturing Clause go into effect in the event of excessive imports would, in our opinion, create significantly more uncertainty in the publishing community than the current law. Conceivably a publisher with a contract to print a book in another country entered into in January could find that by July that book could not be imported due to an increase of import levels triggering the imposition of the Manufacturing Clause. This, of course, is a situation that we would not promote.

8. The comment made relative to the economic and moral aspects of copyright law should be put in the context of the parties of interest. There are essentially three parties of interest in the Manufacturing Clause debate: the printing industry, the publishing industry, and the authors of the works. The author's interest is clearly the moral right of copyright protection. The publisher and printer's interests is clearly the economic aspect. It is in that sense that the Copyright Law has both economic and a moral base. Often the primary beneficiary of the copyright protection is the publisher, even though the publisher may not actually have copyright.

9. The adequate and effective copyright phrase contained in S. 1822 is virtually identical to that currently contained in the generalized system of preferences provisions of the Trade Act. The Office of the U.S.T.R. clearly recognizes the provision and what the provision means. There is no provision in S. 1822 for automatic certification, consequently countries that adhere to Berne or the UCC, or any other copyright treaty, do not under S. 1822 have automatic exemption. I am uncertain of the intent of the question "Can the U.S.T.R. second guess the judgment of the President and the Senate?" The U.S.T.R. is an office of the President, and I would think in that situation would be in no position to second-guess the judgment of the President since it is ultimately the President that has the decision-making authority. Certainly a determination that a country provides adequate and effective copyright protection must depend on the judgment of those who must make that decision, however, from our discussions with the U.S.T.R. this is not a complicated judgment and it is one that they are accustomed to making.

10. We are unaware of the need for additional specificity in the instructions to U.S.T.R. Once again U.S.T.R. must make a judgment as to what is a material non-tariff barrier. However, we understand that these are not complicated issues for the U. S. Trade Representative's office. Clearly in our view if a country has a non-tariff barrier that precludes our ability to trade in that country, or gives a price advantage so significant that exports are virtually impossible, then one would have to come to the conclusion that that would be a material non-tariff barrier. Certainly these issues, it would seem to us, would have to be evaluated on a case-by-case basis.

11. Once again referring to the statement made by the printing industry for the hearing, there is no question that the gradual elimination of the Manufacturing Clause as contemplated under S. 1822 would eventually subject the U. S. printing industry to the competition about which it expresses concern. To restate our position, the reason we are supporting S. 1822 is to provide an orderly expiration of the Manufacturing Clause which affords us an opportunity to at least negotiate some reciprocal gain for the U. S. printing industry as the Manufacturing Clause is expiring.

12. The practice of a particular country with regard to its wage levels or labor laws would be left to the judgment of the U.S.T.R. whether those factors

represented material non-tariff trade barriers. Certainly if a situation arose where a country provided wage incentives for products specifically to be exported, such a practice could be construed as a non-tariff barrier.

13. It is very easy to view the printing industry as a whole rather than a collection of individual industries. Within the printing industry there are segments that are doing quite well. There are other segments that are doing less well. Those segments, for example, covered by the Manufacturing Clause prior to the amendments of 1976 which have subsequently been taken out, are doing very poorly in 1986. The U. S. has virtually lost its role in the production of "coffee table books" and calendars. The strength of the U. S. printing industry tends to be in publication printing, catalogs, time sensitive pieces such as direct marketing, direct mail, and a broad class of product known as general commercial printing which tends to be very local in nature. Those items exposed to import and export have come under tremendous pressure from imports, and in fact those parts of the industry are not faring well. The fact that Donnelley ranks in the top third of major corporations is certainly interesting, and I'm sure exciting for their stockholders, however, the printing industry is comprised of approximately 50,000 companies. Donnelley is far and away the largest company in the industry. The vast majority do not enjoy the high degree of success and profitability of the R. R. Donnelley Corporation.

14. The United States printing industry remains a net exporter and manages roughly \$1.4 billion exports to \$1 billion imports. The component of exports which enables us to have this advantage is periodicals, without which there would be no U. S. advantage. It is interesting to note in the area of books, both those covered and not covered by the Manufacturing Clause, we anticipate 1986 to be the first time in history that the U. S. will have become a net importer. Is our case more compelling than other cases? I am not competent to answer that question, and it would seem irrelevant. If their cases are compelling, then they should certainly be considered.

15. I do not agree with the Copyright Office statement that publishers are not using the option available to print certain books overseas. This position seems to be countered dramatically by statements made at the hearings held on January 21, where the two publishers who testified indicated that without the ability to publish overseas it is inconceivable that they could continue to publish the works they are currently publishing.

16. One of the consistent arguments we have made in the legislative effort in the Manufacturing Clause is that the worst possible solution to the Manufacturing Clause problem is often a temporary extension. While a temporary extension may give proponents of the removal of the Manufacturing Clause reason to hope that the Manufacturing Clause will be removed, it also gives hope to those countries who plan to export such items to the United States because they see a date certain beyond which they should be able to become involved in the U. S. marketplace. Rather than having the Manufacturing Clause as a part of an overall trade negotiating strategy, we have continued to see the Manufacturing Clause and having it viewed by various administrations as a burden rather than an advantage. Consequently little has been negotiated in our behalf with other countries. With regard to the statement that the Manufacturing Clause covers only a small amount of printing business, it should be noted that the U. S. book printing industry is approximately a \$3 billion industry. All of that segment of the industry is exposed to the Manufacturing Clause expiration. We do not regard this as a relatively small amount of printing business.

17. I will refer back to your question 15. Question 15 and question 17 seem to be in conflict. If, in fact, the copyright office is correct that there is relatively little use of the option available to print certain books overseas, then there should be no real concern over the price sensitivity in the area of art in children's books.

18. Of course the U. S. printing industry has the capacity to produce multi-color high quality children's art books at competitive prices. The decision to print overseas or to print in the United States is made in large part on wage differentials, consequently the final price of the product. It is occasionally made on the basis of quality alone on very expensive books. It is often made on the basis of astute selling on the part of the company wishing to do the printing. With the vast market available to U. S. publishers in the United States, it is remarkable that they have been so successful in finding overseas printers to do their work.

19. The judgment of other countries which would probably be exempt would be left to the U. S. Trade Representative.

20. The exemption for Canada was pursued by all parties involved in the 1976 Copyright Law revision. That extension, as borne out in the legislative history, was predicated on Canada's adherence to the Florence Agreement. That action was never taken. It was for that reason, and because of subsequent problems in trade between the U. S. and Canada in printing and publishing that it was proposed that the Canadian exemption be removed.

21. In 1976 when the Toronto Agreement was negotiated, Canada had high tariffs but they had begun a committed program of phasing those tariffs down. Sometime after 1976 as a result of the Tokyo round of negotiations for GATT, Canada increased tariffs in several key product areas so the tariff problem was properly negotiated at one point and must be renegotiated.

22. We can see no basis for a statement that the provisions of S. 1822 would poison our trade and copyright relations with nearly every other country in the world. In fact, the provisions of S. 1822 assure that we are on an equal footing with every other country in the world with regard to copyright and trade protection. No country which is behaving properly according to accepted world standards in copyright protection and trade would be prohibited from the exemption to the Manufacturing Clause.

23. The primary purpose of S. 1822 is to allow negotiating flexibility in the Manufacturing Clause. Under S. 1822 the Clause would expire for those countries that behave according to acceptable copyright and trade standards. It is unlikely that S. 1822 would result in a perpetuation of the Manufacturing Clause. On the other hand, S. 1938 would perpetuate the Clause and would provide no means for negotiating concessions by other countries. We fail to see how an orderly expiration process would lead to uncertainty in the printing and publishing industry. A country is either exempt from the Clause or it is not exempt. A publisher making the decision to have a particular printed in a country would know at the time the contract was entered into whether the country was exempt or not exempt. Therefore there would be very little margin for uncertainty.

24. While the provisions of S. 1822 expand the definition of covered items to include all printed matter protected under the Copyright Law, this does not mean of course that all printed matter worldwide would be restricted. Numerous countries would undoubtedly qualify for exemption very quickly. As a result the only place where a negative impact would continue would be in those industries which continue to send their printing to countries which are not providing adequate copyright protection for the works of U. S. authors, and which have erected non-tariff barriers to printing trade.

25. We fail to see how S. 1822 would complicate the custom service enforcement, since customs routinely examines imported items under current circumstances. Under S. 1822 customs would simply be able to view all items to determine if they are copyrighted and if they are in the English language and who holds the copyright. This should not be dramatically different from determining the manufacturer of an item and identifying what the product is. On the other hand, under the current law the customs official actually has to make a judgment determination whether an item is or is not 50% printing.

26. We are certain that in the final development of S. 1822 appropriate language can be entered into the report to satisfactorily eliminate the types of problems outlined in question 26 which were not intended to be included in the coverage of the legislation.

Senator MATHIAS. Mr. Prine.

STATEMENT OF ARTHUR C. PRINE, JR.

Mr. PRINE. Thank you, Senator. It is a pleasure to be here. I am Art Prine. I am a vice president of R.R. Donnelley & Sons in Chicago, IL.

My written testimony covers a good deal of what has gone before me, including the development of the industry based on this clause, the high sensitivity of the industry to wage rate differentials, and severe anticipated job loss.

In these brief remarks, I think I should focus primarily on the fact that we believe that the manufacturing clause is truly the only weapon in our trade arsenal. The manufacturing clause, for all intents and purposes, is the only trade protection the printing industry has.

On the other hand, as we try to sell printing in other countries, we are faced with monstrous trade barriers. Mr. Samuel was astounded by the lack of any reference to our huge trade deficit. I was for my part somewhat astounded at the lack of recognition of any kind of trade barriers or, as you would call them, Senator, "fences" existing in these other countries.

To hear that previous testimony by U.S. Government representatives, you would think that these trading partners were as pure as the driven snow when, in fact, we are selling against very, very difficult and very high trade barriers in these other countries.

Ben Cooper's testimony contains schedules of these barriers. Just to mention a few of the more prominent, we are trying to sell against very substantial tariffs on catalogs in the European Economic Community. We are also facing a wide range of nontariff barriers in these European countries.

We are faced with wholesale piracy in the Pacific Basin, piracy which is depriving publishers and printers in the United States of a tremendous amount of business, hundreds of millions of dollars a year.

We are faced, as Ben mentioned, with a 31-percent tariff on catalogs when we try and sell catalogs in Canada. Also in Canada, we and our magazine publishers are faced with discriminatory mail rates, big differences between magazines printed in Canada and those printed in the United States.

We are faced with advertising content restrictions and we are faced with special Tax Code restrictions that are all designed to discourage the sale of United States magazines in Canada.

As far as the printing industry is concerned, the U.S. Government is essentially engaged in unilateral trade disarmament, and we find unilateral disarmament just as distasteful in trade matters as we do in military matters.

We believe that one reason why our Government has been so ineffective in dealing with foreign trade barriers is that for the last 9 years the manufacturing clause has been scheduled to terminate, first in mid-1982 and now in mid-1986.

With the manufacturing clause, our only trade barrier, scheduled to end automatically, foreign countries have had little or no incentive to bring down their own trade barriers. The attitude of these other countries appears to be: "Good, the last remaining U.S. trade barrier is going to expire automatically in mid-1986; let us leave all of our trade barriers intact; let us do nothing about shutting down the wholesale intellectual piracy that undermines U.S. production of copyrighted materials; let us get ready to pick up the spoils." Essentially, as we see it, it will be Christmas in the Pacific Basin.

When we granted the Canadian manufacturing clause exemption in 1976, the final conference committee report that came out of the Congress said—and I have the exact quote in my testimony here—that if Canada did not react, the Canadian exemption should be retracted by the Congress. We believe that moment is here.

Now, we are supporting Senator Thurmond's bill, S. 1822, and I think, briefly speaking, there are four major advantages to this approach. The first is that instead of just continuing protectionist legislation, the manufacturing clause can be converted into an instrument of free trade.

A second advantage is that I think that many of our trading partners, such as Great Britain, probably would qualify for immediate exemption. These governments, therefore, should have no standing, as far as I can see it, to object to this bill unless they have significant nontariff barriers and are unwilling to remove them.

A third advantage to this approach is that it restores our bargaining position with Canada. I might point out that with these high Canadian tariffs and these other restrictive practices, is it any wonder that Canadian catalog shipments to the United States have increased by more than 10 times in the last 10 years and are today 6 times greater than our shipments to Canada?

Is it any wonder that our overall United States trading deficit with Canada is second only to Japan?

The fourth advantage to our recommended approach is that it punishes pirates. If we simply allow the clause to expire, the principal beneficiaries will be the very Pacific Basin countries that are now guilty of intellectual piracy.

I cannot say that the extension of the clause as contemplated by this bill will itself stop the piracy, but at least we will not reward them.

Those essentially are the reasons for our support of this bill, gentlemen. My testimony is concluded.

[Mr. Prine's submissions for the record follow:]

PREPARED STATEMENT OF ARTHUR C. PRINE, JR.
ON BEHALF OF THE BOOK MANUFACTURERS' INSTITUTE

EXECUTIVE SUMMARY

- I. PRINTING INDUSTRY (NATION'S LARGEST IN TERMS OF ESTABLISHMENTS AND SIXTH IN TERMS OF EMPLOYEES) IS BASED IN LARGE PART ON 95-YEAR OLD MANUFACTURING CLAUSE -- Coverage of Clause has been progressively narrowed over the years. With the Clause in existence, thousands of companies have been created with billions of investment dollars, and hundreds of thousands of jobs.
- II. INDUSTRY HIGHLY SENSITIVE TO WAGE RATE DIFFERENTIALS -- Printing probably has the highest labor content of any major manufacturing industry. Wage differentials (U.S. vs. Pacific Basin) are, therefore, very destructive.
- III. JOB LOSS -- Job loss estimates vary, but we know job loss will be big. Precise estimates are impossible, since long production run facilities do not now exist in the Pacific Basin.
- IV. MANUFACTURING CLAUSE SHOULD APPLY TO ALL PRINTED MATERIALS -- NOT JUST TO "PREPONDERANTLY LITERARY MATERIALS" -- Current test is vague and unworkable. Many printed materials combine pictures and text. It often is impossible for customs agent to know when "preponderantly" line is crossed.
- V. ONLY WEAPON IN TRADE ARSENAL --
 - . With U. S. a signatory to the Florence Agreement, the Manufacturing Clause is the only trade protection the printing industry has. Printing industry is faced with monstrous trade barriers in our efforts to sell printing overseas. Prominent among these monstrous trade barriers are -- 1) E.C. tariffs on catalogs, 2) a wide range of non-tariff barriers in European countries, 3) wholesale piracy in the Pacific Basin, 4) in Canada a 30% tariff on catalogs, and 5) also in Canada discriminatory mail rates, advertising restrictions, and special tax code restrictions, all designed to discourage sale of U.S. magazines in Canada.
 - . As far as the printing industry is concerned the United States has been engaged in unilateral trade disarmament. One reason why our own government has been so ineffective in dealing with foreign trade barriers is that for the last nine years the Manufacturing Clause has been scheduled to terminate -- first in mid-1981 and now in mid-1986. With the Manufacturing Clause (our only trade barrier) scheduled to end automatically, foreign countries have had little or no incentive to bring down their own trade barriers.
 - . Only sensible trade course for us to pursue now is to extend the Manufacturing Clause (repealing the Canadian exemption so that the Clause will apply to Canada) and use it as a bargaining chip in dealing with other countries.
- VI. MANY ADVANTAGES TO S-1822 --
 - . Promotes free trade.
 - . Should appeal to our major trading partners most of whom should quickly qualify for exemption.
 - . Restores U.S. bargaining position with Canada.
 - . Deals with piracy problem in the Pacific Basin.

* * * * *

I am Arthur C. Prine, Jr., Vice President of R. R. Donnelley & Sons Company, headquartered in Chicago, Illinois. I am testifying today specifically on behalf of the Book Manufacturers' Institute, although it should also be noted that my company is the largest printer in the United States, with some 20 plants in 14 locations across the country. We are also members of The Printing Industries of America which is also represented here today.

We are asking the Congress to retain the Manufacturing Clause as part of U.S. Copyright Law. This request is based on a number of considerations.

I. INDUSTRY BASED ON CLAUSE

Over many years a large and important industry has developed in reliance of the continued existence of the Manufacturing Clause. The Manufacturing Clause has been a part of U.S. law for more than 95 years. Since it was first introduced in 1891, thousands of companies have come into existence, so that today our industry is the nation's largest in number of establishments; billions of dollars have been invested; and hundreds of thousands of jobs have been created, so that today our industry is the nation's sixth largest in terms of jobs.

Although the provisions of the Clause have been progressively narrowed over the years so that it is not nearly as extensive as it was, it remains a cornerstone of our industry.

When first introduced in 1891, the Manufacturing Clause provided that for all practical purposes no one was entitled to U.S. copyright protection unless the printing was manufactured in this country. Simply stated, domestic manufacture was established as a condition for granting copyright monopoly in practically all of what was then copyrightable.

In general, the history of the Clause coverage in the past 95 years has been one of continuing erosion, to a small extent by the Copyright Act of 1909, and further by adoption of the U.C.C. and ad interim copyright provisions in 1954, but drastically and dramatically by the 1976 law, all as shown on Table I.

Table I -- Manufacturing Clause coverage comparison: 1891 versus today

1891	Today
Virtually all copyrightable materials....	Preponderantly nondramatic literary copyrightable materials.
All languages.....	English language only.
All authors.....	U.S. authors domiciled in United States
Whole printing process (typesetting, all preliminary steps, platemaking, printing, and binding) in United States.	All typesetting and other preliminary steps to platemaking for lithographic printing may be done abroad.
Printed in United States only.....	May also be printed in Canada.

As can be seen from the Table, the Manufacturing Clause is far from what it once was. It is still, however, extremely important to the companies, the investors, and the working people whose jobs are keyed to the health and vitality of our industry.

II. PRINTING INDUSTRY IS UNUSUALLY VULNERABLE TO WAGE RATE DIFFERENTIALS

Printing is a highly labor intensive industry . . . probably the most highly labor intensive of any major manufacturing industry in the United States. This means the wage differentials between us and low wage rate countries such as Hong Kong and Singapore are much more destructive to printing than to most other manufacturing industries.

It has been suggested by some that the United States should move out of labor intensive manufacturing industries, like printing, and concentrate on high technology industries where high American wage rates can be supported.

This may be very nice economic theory, but it does not make very nice listening for manufacturers and for workers and their families in the labor intensive industries who are to be sacrificed in the name of long-range economic theory.

III. JOB LOSS

The third major reason for our request to continue the Manufacturing Clause is our deep conviction that several hundred thousand jobs will be lost to foreign competition who benefit from various kinds of government subsidies and support and extremely low wage rates in a labor intensive industry.

Some job loss estimates are much lower, but these lower estimates fail to recognize that long production run facilities currently do not exist in the Pacific Basin. Accordingly, any job loss estimates based on current price differences fall way short of the mark. If the Manufacturing Clause expires, we would expect Japanese and other printers to establish new state-of-the-art facilities in the Pacific Basin. Accordingly, we think it clear that current price and cost analyses are not an accurate forecast for the future.

IV. MANUFACTURING CLAUSE SHOULD APPLY TO ALL PRINTED MATERIALS -- NOT JUST TO "PREPONDERANTLY LITERARY MATERIALS"

Today the Manufacturing Clause covers "preponderantly non-dramatic literary materials." This test is vague and subject to varying interpretations so that it does not provide a good basis for customs agents to make decisions on whether or not specific materials are covered by the Clause. There are many printed materials combining pictures and text in varying degrees. Accordingly, we believe the language should be changed to cover "printed materials." This change will not affect other Clause limitations, such as that the text be in the English language, by U.S. authors, etc.

V. ONLY WEAPON IN TRADE ARSENAL

With the U. S. a signatory to the Florence Agreement (obligating us not to have tariffs on educational and cultural materials), the Manufacturing Clause is the only trade protection the printing industry has.

On the other hand, as we try to sell printing in other countries we are faced with monstrous trade barriers. These barriers are contained in Ben Cooper's testimony on behalf of the Printing Industries of America. Among the most prominent are --

1. E.C. tariffs on catalogs
2. A wide range of non-tariff barriers in European countries
3. Wholesale piracy in the Pacific Basin
4. In Canada a 31% tariff on catalogs, and
5. Also in Canada discriminatory mail rates, advertising content restrictions, and special tax code restrictions, all designed to discourage sale of U.S. magazines in Canada.

As far as the printing industry is concerned, the United States Government has been engaged in unilateral trade disarmament. We find unilateral disarmament just as distasteful in trade as it is in military affairs.

We believe that one reason why our own government has been so ineffective in dealing with foreign trade barriers is that for the last nine years the Manufacturing Clause has been scheduled to terminate -- first in mid-1981 and now in mid-1986. With the Manufacturing Clause (our only trade barrier) scheduled to end automatically, foreign countries have had little or no incentive to bring down their own trade barriers. The attitude of these other countries appears to be, "Good the last remaining U.S. printing trade barrier is going to expire automatically in mid-1986. Let's leave all of our trade barriers intact. Let's do nothing about shutting down the wholesale intellectual piracy that undermines U.S. production of copyrighted materials. Let's get ready to pick up the spoils."

In the case of Canada the record is particularly bad. As explained in Attachment "A" (CANADA AND THE TORONTO AGREEMENT), printing unions, manufacturers, and publishers on both sides of the border entered into a written agreement, signed in Toronto in 1968, to eliminate printing trade barriers. We in the United States honored our commitment by sponsoring and obtaining a Manufacturing Clause exemption for Canada. As can be seen from the list of Canadian trade barriers cited above, the Canadian record is not nearly so satisfactory.

When we granted the Canadian Manufacturing Clause exemption in 1976, the final Conference Committee Report stated that the Canadian exemption is included with the expectation that Canada will move promptly "... to remove high Canadian tariffs on printed matter and ... other Canadian restraints on the printing and publishing trade between the two countries ... The Canadian exemption is

included in Section 601 with the expectation that these changes will be made. If for any reason Canadian trade groups and the Canadian Government do not move promptly in reciprocation with U.S. trade groups and the United States Government to remove such tariff and other trade barriers, we would expect Congress to remove the Canadian exemption."

We think the time has come for the Congress to act in conformance with the 1976 Conference Committee Report.

We believe the only sensible trade course for us to pursue now is to extend the Manufacturing Clause (repealing the Canadian exemption so that the Clause will apply to Canada) and use it as a bargaining chip in dealing with other countries. One way to use the Manufacturing Clause as a bargaining chip is embodied in S.1822. Simply stated this will extend the Clause but provide that the Clause can be waived with respect to countries that can be certified by the S.T.R. as

1. meeting requirements of copyright protection for the work of U.S. authors in their country, and
2. having no material non-tariff or illegal tariff barriers to the importation of American printed products.

In this way we believe the Manufacturing Clause becomes an instrument for free trade. It gives the S.T.R. bargaining authority to remove the Clause for those countries which bring down non-tariff and illegal tariff barriers, and which protect U.S. copyrights.

VI. MANY ADVANTAGES TO S.1822

The advantages of this approach are many --

1. Free Trade -- Instead of continuing protectionist legislation, the Manufacturing Clause can be converted into an instrument of free trade. The S.T.R. should be able to move quickly to provide exemptions for many of our trading partners. In those cases where we are faced with vicious piracy or large non-tariff trade barriers, the S.T.R. will retain a bargaining chip to use in negotiations.
2. Lack of Objection from Trade Partners -- Since many of our major trading partners (e.g. Great Britain) should qualify for immediate exemption, these governments should have no standing to object to the bill.
3. Restores Bargaining Position with Canada -- As indicated earlier, since we granted an exemption to Canada in 1976, Canada has not reciprocated, but has left most of its extraordinary barriers in place, and in some cases increased them. Is it any wonder that in the last ten years Canadian book shipments into the U.S. have increased by 537% while our shipments into Canada have increased by only 37%. Is it any wonder that Canadian catalog shipments to the U.S. have increased by more than ten times in the last ten years and are today six times greater than our shipments to Canada? And is it any wonder our overall U.S. trading deficit with Canada is second only to Japan?
4. Punishes Pirates -- If we simply allow the Clause to expire, the principal beneficiaries will be the very Pacific Basin countries that are now guilty of intellectual piracy. On the other hand, if they will cooperate in bringing this piracy to a halt, they should be able to qualify for exemption.

ATTACHMENT "A"

CANADA AND THE TORONTO AGREEMENT

Background -- In March of 1968 there was signed in Toronto, Canada an agreement that may well be unique in the annals of international trade.

Representatives of publishers, manufacturers and printing unions gathered in Toronto, to examine the conflicting needs of the printing and publishing industries in the two countries. Representatives from the United States included officers of various printing unions, as well as representatives from

the Book Manufacturers' Institute, the Printing Industries of America, the American Book Publishers Council, and the American Educational Publishers Institute, the last two being forerunners of the current Association of American Publishers. Canadians represented corresponding unions and printing and publishing associations.

We were faced with conflicting objectives and motivations. On the U.S. side, the manufacturers and unions were reluctant to give Canada an exemption under the Manufacturing Clause. We did, however, recognize the merit of the position advanced by Canadian printers in our Book Manufacturers' meeting. Canadian printers were understandably critical of their inability to bid on U.S. authors' works. U.S. publishers favored an exemption for Canada under the Manufacturing Clause, partly because they wanted to avail themselves of Canadian printing sources, and also because they hoped Canada would join the Florence Agreement and eliminate tariffs on U.S. published books they shipped into Canada. I am not totally familiar with the objectives of our Canadian counterparts but, obviously, Canadian printing unions and printers wanted to be able to bid on U.S. authored works. Further, it seems clear that publishers in Canada hoped to be able to use U.S. printers. And, perhaps, also some publisher-distributors hoped to be able to obtain U.S. published materials without the weight of tariffs imposed as they crossed the border.

The Agreement -- The result of all of our deliberations was a truly remarkable agreement. Essentially, the parties agreed to do four things --

1. U.S. representatives agreed to do their utmost to obtain for Canada an exemption under our Manufacturing Clause.
2. Canadian representatives agreed that as soon as the Manufacturing Clause exemption was obtained, they would urge the Canadian government to sign the Florence Agreement, thereby obligating itself to remove all tariffs on educational, scientific and cultural materials. It was specifically noted that acceptance of the Florence Agreement could be accomplished in Canada without an Act of Parliament.
3. The Agreement also spelled out some actions to be taken to oppose the Stockholm protocol and other attempts to weaken international copyright protection under the Berne and Universal Copyright Convention. I shall not take the time to explain these undertakings since they are not relevant to our subject today ... except to note that so far as I know, all parties have honored their commitments under the Clause.
4. The final provision of the Toronto Agreement, and certainly one of the most important, states, "It is anticipated that cooperative efforts on, and resolution of, the foregoing issues in a mutually satisfactory manner will lead promptly to definite future cooperation between the United States and Canadian groups on the removal of any remaining barriers to trade between the two countries affecting their printing and publishing industries."

Performance under the Toronto Agreement -- When we look at the record to determine how well the parties have carried out their Toronto Agreement obligations, we find that we in the United States have honored our commitments, but the Canadian record is not nearly so satisfactory.

Although Copyright Law revision in the United States was delayed because of cable T.V. and other considerations, we honored our commitments, consistently pushing for a Canadian exemption in the Manufacturing Clause. And, indeed, the new Copyright Bill did contain a Canadian exemption.

Canada has never signed the Florence Agreement. Nor have we seen any action to remove these other tariff barriers as contemplated by the Toronto Agreement.

The one thing Canada has done is temporarily to remove duties on books shipped into Canada. It is significant, I think, to note that the Canadian order to eliminate duties on books extends only to July 1, 1986, the date when our Manufacturing Clause is due to end. In the Congressional floor debates that attended consideration of the new Copyright Law, one Congressman took special care to note that continuation of the Manufacturing Clause and our ability to grant or withhold an exemption for Canada, stands as our only weapon in dealing with Canada on tariff problems. How prophetic his words were. With the Manufacturing Clause now scheduled to end in 1986, the Canadian order is written so that duties on books entering Canada will be reinstated as our Manufacturing Clause ends.

RESPONSES OF ARTHUR C. PRINE, JR.
TO WRITTEN QUESTIONS SUBMITTED BY SENATOR MATHIAS

1. Q. Assuming you are correct about the dire consequences that expiration of the manufacturing clause would cause, why are existing trade remedies insufficient to protect the printing industry?

Have the printers or the unions taken their case for unfair foreign competition to the government? If so, what was the response?

- A. Certainly the industry has attempted to take its case before the government. We have met with the International Trade Commission and participated in their study of the Manufacturing Clause. We have met several times with representatives of the U. S. Special Trade Representative's office to discuss our problems. To date there has been no positive response of any type from any of these agencies. As to existing remedies, see below.
2. Q. Section 201 of the 1974 Trade Act only requires demonstration that import penetration is causing or threatening to cause substantial damage to a domestic industry. When the United States ratified the Florence Agreement didn't we reserve the right to still use 201 relief? Why couldn't you apply for section 201 relief if the damage you predict actually happened or was imminent?

- A. While the U. S. did reserve the right to apply for section 201 relief under the Manufacturing Clause, we feel this would be a long shot at best. In order to invoke the provisions of 201 under the Florence Agreement, it would be necessary for the United States to, in effect, withdraw from a significant portion of the treaty. It is our opinion that the actual effect of the 201 relief issue is that we would have to have experienced substantial difficulty in order to apply for 201 relief. It is regrettably the character of our industry that by the time you experience substantial problems, many of the companies experiencing the problems will have already succumbed economically.

Additionally, it is not our desire to control the import and export of printing through tariffs. We would much prefer to have no tariffs on books if other printed material if other countries of the world will follow the same path.

3. Q. The testimony from U.S.T.R. indicates that the manufacturing clause is a GATT violation. Don't you think this removes the bargaining potential of the clause, since countries now have cause to retaliate even without trading away any barriers? Couldn't this retaliation be taken against us in ways that could harm other industries? Would resorting to section 201 make retaliation any more likely?

- A. It is our very strong opinion that the Manufacturing Clause is a GATT violation due to the failure of U. S. Trade Representative's office properly to handle the issue before GATT. Our negotiators committed, during the Tokyo Round, that the Manufacturing Clause would expire. This was done without consultation with the industry and without reference to the legislative history of the Manufacturing Clause extension. Subsequently, when a complaint was filed against the U. S. over the extension of the Manufacturing Clause in 1982, it is our firm opinion of that case that the issue could have been more aggressively argued. Certainly the United States is not alone in GATT violations. Further, we are not anticipating retaliation in a wide variety of printed product areas because the United States is the major market for printing, and it is therefore important for those countries to have access to the U. S. market. The lone exception to this, of course, is Canada, which we contend is already of questionable standing with regard to GATT.

4. Q. In material provided by the printing industry listing non-tariff trade barriers, I note the inclusion of certain censorship laws. France for example, is listed as prohibiting the importation of publications that are "contrary to morality of consumption, distribution, exhibition or lease" and materials that are "pernicious for youth." Yet no indication is given of any U. S. non-tariff trade barriers in this area. Don't our prohibitions on importation of printed material under the Foreign Agents

Registration Act constitute the same type of nontariff barrier? If so, how do you propose we change our law? Should other countries retaliate against us because of these types of "barriers"? If not, why do you include censorship laws in the list of nontariff trade barriers?

- A. As indicated in our testimony, we did not develop the list of non-tariff trade barriers, it came from the International Trade Commission. I have no direct knowledge of the implications of the Foreign Agents Registration Act and would have no expertise in recommending any changes to that law.
5. Q. Isn't the manufacturing clause a "material non-tariff trade barrier"? If another country adopted one, wouldn't that prevent them from being exempted from ours, under S. 1822? Isn't there an element of hypocrisy in insisting on protection for our printing industry while decrying it in other countries? Won't enactment of S. 1822 lead to more such barriers around the world, rather than fewer?
 - A. The Manufacturing Clause certainly may be considered a material non-tariff trade barrier. It seems perfectly logical to us that the United States would be willing to allow its material non-tariff trade barrier to be removed if other countries would likewise remove their material non-tariff trade barriers. Should the Manufacturing Clause expire on June 30 of this year, the U. S. would have removed its material non-tariff barrier, while no action would have been taken against the non-tariff barriers of other countries. Not only do we not regard it as hypocrisy to continue the Manufacturing Clause, we would regard it as the height of folly to allow our barrier to be removed without asking the same in return from other countries.
 6. Q. Why does the printing industry deserve this special protection in our copyright law? Wouldn't it be more appropriate to impose tariff or nontariff barriers instead of holding our authors hostage? Do you think that all intellectual property rights should be conditioned on the artist, author or inventor producing his work here? For example, should we require inventors to manufacture their inventions in this country as a precondition for patent protection? If not why give this benefit to printers?
 - A. We have never suggested that the Manufacturing Clause is the ideal solution to the printing industry's potential trade problems. We have only indicated that the Manufacturing Clause is a solution and has afforded us a measure of protection, and that it should not be allowed to expire without some reciprocal gain from those countries that likewise impose barriers. If a similar provision were in the patent law requiring inventors to manufacture their inventions in this country as a pre-condition for patent protection, we might support the position that that provision not be eliminated without similar reciprocal concessions by other countries. Please recognize that in discussing the Manufacturing Clause this is not new law, but the continuation of a law that has been on the books of the United States since 1891.
 7. Q. Could you please comment on two suggestions made by the Register of Copyrights.

The first is the idea of providing some protection against imports of printed material, but within the trade act rather than the copyright act. The second is to allow the clause to expire, but on the condition that it automatically come back into force if the dire consequences predicted by some are realized: i.e., if imports exceed a certain level.

 - A. The Register of Copyrights proposal had many attractive features to it, however, the notion of having the Manufacturing Clause go into effect in the event of excessive imports would, in our opinion, create significantly more uncertainty in the publishing community than the current law. Conceivably a publisher with a contract to print a book in another country entered into in January could find that by July that book could not be imported due to an increase of import levels triggering the imposition of the Manufacturing Clause. This, of course, is a situation that we would not promote.
 8. Q. The standards in S. 1822 for certification by USTR have come in for criticism. What is needed to prove "adequate and effective" copyright protection? Does a country that adheres to the Berne Convention automatically qualify? How about a country, like the U. S., that is not a party to Berne, but to the Universal Copyright Convention? What about a

party that has a copyright treaty with the U. S.? Is that enough, or can the USITR second-guess the judgment of the President and the Senate that copyright protection in that country is adequate?

A. The adequate and effective copyright phrase contained in S. 1822 is virtually identical to that currently contained in the generalized system of preferences provisions of the Trade Act. The Office of the U.S.T.R. clearly recognizes the provision and what the provision means. There is no provision in S. 1822 for automatic certification, consequently countries that adhere to Berne or the UCC, or any other copyright treaty, do not under S. 1822 have automatic exemption. I am uncertain of the intent of the question "Can the U.S.T.R. second guess the judgment of the President and the Senate?" The U.S.T.R. is an office of the President, and I would think in that situation would be in no position to second-guess the judgment of the President, since it is ultimately the President who has the decision-making authority. Certainly a determination that a country provides adequate and effective copyright protection must depend on the judgment of those who must make that decision; however, from our discussions with the U.S.T.R. this is not a complicated judgment and it is one of a kind that they are accustomed to making.

9. Q. Similarly, as to non-tariff trade barriers, the concept is rather elastic. Depending on the interpretation, most of our major trading partners could be in --- or out. Clearly, there needs to be more specificity in our instructions to the USITR -- or should we give him a blank check? What are your thoughts on how this standard ought to be interpreted?

A. We see no need for additional specificity in the instructions to U.S.T.R. Once again U.S.T.R. must make a judgment as to what is a material non-tariff barrier. However, we understand that these are not complicated issues for the U. S. Trade Representatives office. Clearly, in our view, if a country has a non-tariff barrier that precludes our ability to trade in that country, or gives a price advantage so significant that exports are virtually impossible, then one would have to come to the conclusion that that would be a material non-tariff barrier. Certainly these issues, it would seem to us, would have to be evaluated on a case-by-case basis.

10. Q. The main reason given for the ability of foreign printers to penetrate our market is the wage differential. Won't the exemption of low-wage countries from the requirements of the manufacturing clause eventually open our printing industry to foreign competition that you claim will cripple it?

A. There is little question that the gradual elimination of the Manufacturing Clause as contemplated by S. 1822 would eventually subject the American printing industry to competition from which it is currently protected. It is also true, however, that S. 1822 would afford us with the opportunity to negotiate some reciprocal gains in exchange for the waiver of the Manufacturing Clause.

11. Q. Should wage levels or labor practices be a factor in the USITR's certification? Or should other means be used to prevent the loss of jobs to low-wage countries?

A. It must be left to the U.S.T.R. to decide if the practices of a particular country with regard to its wage levels or labor laws represented material non-tariff trade barriers. For example, if a country provided wage incentives for products specifically to be exported such a practice could certainly be construed as a non-tariff barrier. Wage levels or labor practices not constituting such a barrier are not material to this issue.

12. Q. Since, as we all seem to agree, this is a trade issue in copyright garb, the question of the economic health of the industry is more relevant here than it is in some other issues before the subcommittee. Isn't the printing industry doing pretty well? I note that R. R. Donnelley ranks among the top third of major corporations in profitability over the past five years, and in the top sixth in earnings growth. What about the rest of the industry?

A. It is very easy to view the printing industry as a whole rather than a collection of individual industries. Within the printing industry there are segments that are doing quite well. There are other segments that are doing less well. Those segments, for example, covered by the Manufacturing Clause prior to the amendments of 1976, but not there-

after, are doing very poorly in 1986. The U. S. has virtually lost its role in the production of "coffee table books" and calendars. The strength of the U. S. printing industry tends to be in publication printing, catalogs, time sensitive pieces such as direct marketing, direct mail, and a broad class of product known as general commercial printing, which tends to be very local in nature. Those items exposed to import and export have come under tremendous pressure from imports, and in fact those parts of the industry are not faring well. The fact that our company has done relatively well is of course, gratifying to us, but the printing industry is composed of approximately 50,000 companies, most of them small, and most of which have not done so well.

13. Q. In particular, isn't the industry doing pretty well in terms of exports? We are the leading printing exporter in the world, and have a favorable balance of trade in this sector, even though the U. S. is the biggest market. Canada, by contrast, is the biggest importer of printed material in the world. Are the non-tariff trade barriers in this field really such a serious threat to exports that we should enact special legislation, in violation of our international obligations, in order to try to get them lowered? Is the printers' case more compelling than that of semiconductors or agricultural products?
- A. The United States printing industry remains a net exporter, with roughly \$1.4 billion in exports to \$1 billion in imports. The component of exports which enables us to have this advantage is periodicals, without which there would be no U. S. advantage. It is interesting to note in the area of books, both those covered and not covered by the Manufacturing Clause, we anticipate 1986 to be the first time in history that the U. S. will have become a net importer. Is our case more compelling than other cases? I am not competent to answer that question, and it would seem irrelevant. If the cases of other industries are compelling, then they should certainly be considered.
14. Q. The Copyright Office suggests that publishers are now making relatively little use of the option available to them to print certain books overseas (those now exempt from the manufacturing clause). Do you agree? Doesn't this suggest that your predictions of what will happen if the manufacturing clause expires altogether may be a little exaggerated?
- A. I do not agree with the Copyright Office statement that publishers are not using the option available to print certain books overseas. A casual walk through a bookstore would strongly suggest the contrary. For example, the massive and very handsome catalog of the Treasures of British Country Houses exhibit now at the National Gallery was printed overseas.
15. Q. The Register of Copyrights tells us in his testimony that basically the same arguments were made in the mid-1960's, when this issue was discussed as part of the copyright revision effort. Since then, the manufacturing clause has been substantially liberalized. Yet the industry appears to be reasonably robust, and jobs have not been lost to imports. Only a relatively small amount of the printing business is affected by the clause that is due to expire. On what basis should we accept your prediction of dire consequences? Is there new information that changes the picture from the one that has been painted for 20 years?
- A. One of the consistent arguments we have made in the legislative effort on the Manufacturing Clause is that a temporary extension is far from the best possible solution to the problem. While a temporary extension may give opponents reason to hope that the Manufacturing Clause will be removed, it also gives hope to those countries who plan to export such items to the United States, because they see a date certain beyond which they should be able to become involved in the U. S. marketplace. Far from having the Manufacturing Clause as a part of an overall trade negotiating strategy, we have continued to see it viewed by various administrations as a burden, rather than an advantage. Consequently, little has been negotiated in our behalf with other countries. With regard to the statement that the Manufacturing Clause covers only a small amount of printing business, it should be noted that U. S. book printing is approximately a \$3 billion industry. All of that segment of the industry is exposed to the Manufacturing Clause expiration. We do not regard this as a relatively small amount of printing business.
16. Q. The publishers contend that there is a real price sensitivity in the area of art and children's books. They contend that including these "mostly

pictorial" works under the clause will either price these books out of the market, or else publishers will use foreign authors and illustrators in order to retain copyright and stay outside the provisions of the clause. Please comment.

- A. I refer to your question 14 above. Questions 14 and 16 seem to be in conflict. If, in fact, the Copyright Office is correct that there is relatively little use of the option available to print certain books overseas, then there should be no real concern over the price sensitivity in the area of art in children's books.
17. Q. Do U. S. printers currently have the capacity to produce multicolor, high quality children's art books at competitive prices? If not, why not and where does the competition for high quality multicolor works come from? Is there a large wage differential between these countries and the U. S. and if there is, is it due to the overvalued dollar or is it chronic?
- A. U. S. printers clearly have the capacity to produce high quality, multicolor children's art books. The competitive price point is more difficult. As the dollar weakens, we become more competitive with the quality printers of Western Europe, particularly in Switzerland and the Netherlands. A more favorable dollar/yen ratio, plus rising wages, should help with respect to Japan. A requirement that other Pacific Basin competitors, Taiwan, South Korea and Singapore, pay the normal royalties associated with the honoring of copyrights will at least help to narrow the cost gap in that area.
18. Q. I understand that it was the U. S. and Canadian printers who in 1976 pushed for exempting Canada from the requirements of the manufacturing clause. Why do you support a bill that now includes Canada?
- A. The exemption for Canada was pursued by all parties involved in the 1976 Copyright Law revisions. That extension, as borne out in the legislative history, was predicated on Canada's adherence to the Florence Agreement, and good-faith actions to eliminate other barriers to American printing. Those actions were never taken. It was for that reason, and because of subsequent problems in trade between the U. S. and Canada in printing and publishing, that it was proposed that the Canadian exemption be removed.
19. Q. Didn't Canada lower its duties on books even though it did not sign the Florence Agreement? Further, the printing industry has expressed a lot of concern over Canadian non-tariff barriers on printed materials, particularly catalogs. Did you push the Canadians to lower these in 1976 when you negotiated the Toronto Agreement? Did you use the manufacturing clause back then as a bargaining chip?
- A. Canada eliminated tariffs on books for the same time-span as the life of the U. S. Manufacturing Clause. If the clause goes, those tariffs return. In 1976, when the Toronto Agreement was negotiated, Canada had other high tariffs, but had begun a committed program of phasing those tariffs down. Sometime after 1976, as a result of the Tokyo round of negotiations for GATT, Canada increased tariffs in several key product areas. So the tariff problem was properly negotiated at one point, but must now be renegotiated.
20. Q. There are real grievances with respect to Canada, both on the trade side and the copyright side. But aren't there adequate remedies under existing law that will help put pressures on Canada to respond to these problems? If Canada is the primary concern, why should we address it by passing a statute that may poison our trade and copyright relations with nearly every other country in the world?
- A. We can see no basis for a statement that the provisions of S. 1822 would poison our trade and copyright relations with nearly every other country in the world. In fact, the provisions of S. 1822 assure that we are on an equal footing with every other country in the world with regard to copyright and trade protection. No country which is behaving properly, according to accepted world standards in copyright protection and trade, would be subject to the Manufacturing Clause.
21. Q. Several other witnesses have commented on the uncertainty that S. 1822 would bring to the printing and publishing industries. A country's status with respect to the manufacturing clause could be unclear, or could change overnight. That's not conducive to stability in the industry. For that

reason, even some opponents of the manufacturing clause would prefer "the devil they know" to the uncertainties of your proposal. After ten years in its current form, the manufacturing clause is at least a known quantity. Why are these parties -- including organized labor -- wrong? Why should we enact a "new, improved" manufacturing clause? If we do, how can we build in more predictability and certainty?

- A. The primary purpose of S. 1822 is to allow negotiating flexibility in the Manufacturing Clause. Under S. 1822 the Clause would expire for those countries that behave according to acceptable copyright and trade standards. We fail to see how an orderly expiration process would lead to uncertainty in the printing and publishing industry. A country would either be exempt from the Clause or not be exempt. A publisher making the decision to have a particular item printed in a country would know at the time the contract was entered into whether that country was exempt or not. So we don't understand the point about uncertainty.
22. Q. Because S. 1822 would bring under the manufacturing clause a great deal of material -- for example, advertising material, maps, sheet music -- not now covered, its enactment could have a major impact on other copyright-related industries besides book publishing. Its repercussions could be felt in Silicon Valley, on Madison Avenue, and on Tin Pan Alley, and elsewhere as well. Has there been any assessment of the impact of this legislation on employment, profitability and growth in these affected industries, and on the effect on consumers of the products of these industries?
- A. While the provisions of S. 1822 expand the definition of covered items to include all printed matter protected under the Copyright Law, this does not mean, of course, that all printed matter, worldwide, would be restricted. Many countries would undoubtedly qualify for exemption immediately. As a result, the only place where a negative impact would continue would be in those industries which continue to send their printing to countries which are not providing adequate copyright protection for the works of U. S. authors, and which have erected non-tariff barriers to printing trade.
23. Q. You suggest that the current manufacturing clause is difficult for the Customs Service to enforce. Can you give some examples of problems that Customs has encountered? Wouldn't S. 1822 require Customs to examine imported items -- e.g., t-shirts, advertising material, matchbooks, computer equipment -- for printed material in the English language? Wouldn't that be even more burdensome?
- A. We fail to see how S. 1822 would complicate the custom service enforcement, since customs routinely examines imported items under current circumstances. Under S. 1822 customs would simply be able to view all items to determine if they are copyrighted, if they are in the English language, and who holds the copyright. This should not be dramatically different from determining the manufacturer of an item and identifying what the product is. On the other hand, under the current law the customs official actually has to make a determination as to whether an item is or is not "preponderantly... literary."
24. Q. One troubling aspect of S. 1822 is the broad sweep of the phrase "printed material in the English language." This could include many items not now within the manufacturing clause, including sheet music, maps, advertising matter, foreign language works, and others, as long as they contained a printed word or two in English. I'm also concerned about the fact that the entire work, not just the English language portions, would be affected. Thus, there might be no copyright protection for a photograph because of its caption; for a tune because of its lyrics; even, conceivably, for a phonograph record because of the album cover. It might even be that a computer program, in a Read-Only-Memory semiconductor chip, would lose protection because the copyright notice engraved on the chip was in English. And these are only some of the possibilities.

I know many of these effects were not intended. Please tell me the intended effects. What material does this bill seek to reach that is not now covered by the manufacturing clause? What can be done to exclude the material you do not seek to cover?

24. A. You are quite right in assuming that there is no intention to cover such items as semi-conductor chips. We are confident that if this is seen as a problem, appropriate language can be added to S. 1822 to deal with this type of problem.

Senator MATHIAS. Let me start with Mr. Cooper and Mr. Prine because they have both expressed particular concern about Canada, both with respect to trade and with respect to copyright issues. Do you feel that the other remedies that exist under current law are adequate to put pressure on Canada or to respond to the problems?

Mr. PRINE. I am afraid I have to say that they are not, Senator. I also have to point out that we have been calling these matters to our Government's attention for something over 10 years. These are not something that were discovered by our Government a few weeks ago. Existing remedies just have not worked.

I would point out one other thing, and there is considerable attention to this in my written testimony. I was part of a group that went up to Canada in 1968 with representatives of printing unions, printing manufacturers, and publishers from both sides of the border.

We entered into a kind of unique formal signed agreement under which the representatives of all these parties agreed to do a number of things. We from the United States said we would push for a Canadian exception to the manufacturing clause and the Canadians on their part were going to start bringing down their trade barriers.

We delivered on our promise. Except for a Canadian term reduction on book duties that Ben Cooper referred to, Canada just simply has not acted. So these are not matters that have just come to our attention or the attention of our Government.

It seems pretty clear to us that under existing approaches, these problems simply are not being handled.

Mr. COOPER. Mr. Chairman, if I might add to that, we certainly appreciated the very fine audience we had with Ambassador Yeutter a couple of weeks ago where we were able to discuss these issues.

I might point out that the increase in Canadian tariffs by 50 percent in the area of catalogs and advertising just occurred on January 1. We have been complaining about this specifically for well in excess of 2 years through correspondence and direct meetings with people in the USTR and Commerce Department.

We were advised when we first brought this to the attention of our Government that, yes; they knew about it and they had agreed to it because it was part of an overall reduction in tariffs.

Well, that is true that tariffs are being reduced in a number of other printed product areas. However, we only trade primarily in books, catalogs, and advertising. In books, of course, we still have the agreement on the zero duty, and the other two product areas they bumped by 50 percent.

A 10-percent tariff might be high when you consider that ours is less than 1 percent. A 31-percent tariff is a closed door. We are the largest catalog-producing industry in the world. We now export to Canada only 7 million dollars' worth of catalogs.

Senator MATHIAS. Well, if Canada is one of the major concerns here, is it wise, looking at the comprehensive interests of the United States, to pass a statute that could affect adversely trade and copyright relations with almost every other country in order to deal with the problem with one country?

Mr. COOPER. If I may, I am frankly puzzled as to how this would adversely affect copyright standing in other countries. We are now discussing the possible adherence to the Berne Convention. Our bill, in fact, embodies the very spirit of the Berne agreement.

I would think that countries that meet at least standard A of S. 1822 would be members of the Berne Union, while those countries that cannot meet it would not be members. So it seems to me that we are fairly consistent in that area, and to tell a country that we cannot certify as adhering to internationally agreed copyright standards that it can continue to trade with our country in copyrighted materials seems awfully inconsistent. I cannot see how that is going to adversely affect our ability in that area.

Senator MATHIAS. Let me ask Mr. Samuel and Mr. Norton if they share your concern about Canada and, if they do, to comment whether they continue to advocate exempting Canada from the manufacturing clause.

Mr. SAMUEL. Sir, I am not an expert on the details of the bill, but I believe that our goal really is to protect jobs. As you know, the United States has been suffering a hemorrhage of jobs for a number of years, and a major cause of that hemorrhage has been the immense trade deficit in our manufacturing sector which has been going on now with, I think, only one exception since 1972.

It seems to me that where we lose those jobs, whether it is in Canada or Taiwan or Hong Kong, is not particularly vital. What we have got to do is stem the hemorrhage and steps have to be taken to do that, and this is one way at least to avoid making it worse.

Mr. NORTON. If I may, Senator, we were in favor of the exemption that was granted to Canada. I cannot speak from the point of view of my fellow colleagues to my left here, excepting that our concentration would be on the job side of the issue, it does appear that some of their concerns have not been addressed by Canada, although preliminary discussions that were held in the late sixties indicated they had at least an acknowledgement of what the problem was.

A lot of water has gone under the bridge. Perhaps that problem again could be addressed at least from their side of the coin. But in the final analysis, our concern goes back to what Mr. Samuel has referred to, and that is the job issue.

If we can address the job issue first, it seems to me that we can then address the other aspects of the exemption that Canada now enjoys.

Senator METZENBAUM. Well, apropos that same question, jobs in Canada do not help jobs in America. Why are you in favor of the exemption for Canada? I do not understand that.

Mr. NORTON. It was our intention at the time the exemption was granted to keep at least the contract portion of the printing industry within competitive limits to each other so that the advantages, where advantages did occur, occurred because of equipment and skills.

Senator METZENBAUM. And now they have indicated that by reason of new tariffs that it is not comparable, and my question to you is, are you still saying that you support the exemption for

Canada or do you think that if we extend this law that we ought to eliminate the exemption for Canada?

Mr. NORTON. I think we can do both. I think we can continue to support the exemption and continue, as well, to try to gain some of the discussed points that we are at odds with with Canada from the late 1960's.

Senator MATHIAS. That, of course, raises what the nature of our dispute with Canada really is. As Mr. Cooper has explained it, the problem in many cases is tariff barriers. Am I correct, Mr. Cooper?

Mr. COOPER. Yes.

Senator MATHIAS. And you gave us the example of the Canadian tariff on catalogs. The fact is that Senate bill 1822, of course, does not really help in this case because a country generally could be certified as exempt if it removes its nontariff barriers, even if it maintains its tariff barriers.

So the question arises as to whether you are in the right court, whether you ought not to be seeking some remedy under the trade laws or seeking international negotiations to reduce tariffs.

Mr. COOPER. Mr. Chairman, I might point out there is also a provision in S. 1322 which prohibits what I will refer to as illegal increases in tariffs. We frankly question whether the increase in Canada is an appropriate increase.

Fifty percent is a whale of an increase in a product area where your exports already outweigh your imports by a ratio of 6 to 1.

Also, I might add, too, that since the discussion of the removal of the Canadian exemption on the manufacturing clause which affects their largest export market to the United States in printed products, they have contacted us to sit down and discuss a whole array of trade problems.

They had not contacted us previously, and we see that as a very encouraging sign. We would like to be able to go back to our respective governments with another Toronto agreement in trade.

Senator MATHIAS. It is obvious that this whole question is going to require careful study by the committee. I have a lot more questions, but in order to give my colleagues time to ask some questions, I am going to submit mine for you in writing and would request that you respond in writing. Your answers will become a part of the record.

Senator Leahy.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator LEAHY. Thank you, Mr. Chairman. I, too, will have a series of questions for the record. I have signed on as a cosponsor to both S. 1938, Senator Metzenbaum's bill, and S. 1822. S. 1938 extends the manufacturing clause indefinitely, and S. 1822 would permit any country to become exempt from the clause if the country provides copyright protection for the works of American authors and has no material tariff or nontariff trade barriers to the printing trade.

Now, they are alternative proposals; I do not think they are in conflict with each other. I think the sponsors of both bills share my

view that we can work together to fashion legislation which preserves the important protections of the manufacturing clause.

Some argue that permitting the manufacturing clause to expire is going to benefit primarily American authors and American publishers. While I do not doubt the sincerity of that argument, I think it is just plain wrong.

If we permit the manufacturing clause to expire, the primary beneficiaries are going to be the countries which have imposed high tariff and nontariff trade barriers to American printed works—some of these same countries that fail to protect American copyrights and that permit flagrant pirating of American books, and countries which countenance and even—and we all know this—encourage unfair trade practices. It becomes a matter of government policy.

As I stated earlier, Mr. Chairman, I have a great deal of concern about countries which have the ability to pirate American works, and I do not think we should allow it.

This piracy is compounded at a time of enormous trade deficits, when a lot of American jobs in the printing and publishing industries are lost.

What do you anticipate the job loss to be from eliminating the manufacturing clause?

Mr. NORTON. Directly from the survey conducted by the Department of Labor, Senator, in 1981, they estimated 172,000 jobs in the printing industry alone, and then in associated jobs related to it, approximately a loss of 367,000 jobs. Once those jobs are lost, we can never expect them to return.

Senator LEAHY. What countries are going to benefit the most from that?

Mr. NORTON. Countries like Malaysia, Taiwan, and China.

Mr. PRINE. The Pacific Basin would be my—

Mr. NORTON. The Caribbean Basin.

Mr. PRINE. Yes. If I could add one other thing on the job loss, Senator, you will find a lot of estimates; there is a tremendous range. One reason for the big variances is that in the Pacific Basin today, you generally do not have long-run production facilities.

So when economists, whether it is at the ITC or somewhere else, start to look at costs and prices that exist today, those are not, in my opinion at least, a forecast of lower prices that will come if the manufacturing clause goes off and if the Japanese take what is essentially on-the-shelf equipment and put it into the Pacific Basin.

You will have a much lower level of costs and prices than you have today. So I do not think that job loss can be forecast on the basis of current cost and price levels.

Senator LEAHY. I might be at least the only person on this panel that actually has set hot lead in a printing company, as well as offset. This is not an ad for the Leahy Press where I did this work back in Vermont, because the family has long since sold the company.

But I recall, when growing up in the printing industry, that every year there were significant technological advances, certainly throughout the fifties and sixties, and still today.

I remember one of my father's main concerns was to keep up with new advances in order to remain competitive. Has that been

the trend in the past 5 years in the printing industry? It is about the seventh largest industry in this country. Has it been competitive? Has it kept up with technological advances?

Mr. PRINE. I think the rate of technological change has really accelerated in our industry, as it has in many others. There has been a tremendous amount of technological advance.

Senator LEAHY. But has the industry invested a great deal in keeping up with the new innovations?

Mr. PRINE. A great, great deal.

Senator LEAHY. One last question. What kind of import restrictions has Canada placed on American works?

Mr. COOPER. On American works?

Senator LEAHY. Yes. If we wanted to send American printed works into Canada, are there trade restrictions placed on them by the Canadians?

Mr. COOPER. They are fairly dramatic. I do not have a list of the tariffs here with me, but I am unaware of a tariff on imported printed products to Canada of less than 10 percent, with the exception of those books, the items that they have zero rated. I think they also charge no duties on bibles.

Senator LEAHY. The Canadians are not primary advocates of free trade in this regard, then?

Mr. COOPER. They are advocates of protection of their cultural heritage.

Mr. PRINE. When they talk about our manufacturing clause, they are advocates of free trade. [Laughter.]

Senator LEAHY. Mr. Samuel, you were going to say something about those tariffs?

Mr. SAMUEL. As of January 1, the tariff on catalogs was 30.5 percent, which is almost prohibitive; on advertising materials, 25.9 percent; greeting cards and labels, 12.4 percent. On July 1, on books, it goes to 10 percent.

Senator LEAHY. Thank you, Mr. Chairman, and I will have both questions for the record and a statement for the record, with your permission.

[Senator Leahy's statement follows:]

PREPARED STATEMENT OF SENATOR PATRICK LEAHY

I'm very pleased to participate in these hearings on S. 1822 and S. 1938, which would extend the manufacturing clause of the Copyright Act.

I think it's appropriate that Senator Mathias scheduled these hearings on the first day of the new session, because this is a matter which requires our immediate attention. If we fail to act on the legislation pending before the subcommittee, the manufacturing clause, section 601 of the Copyright Act, will expire on June 30, 1986. I think Congress would be making a tragic mistake if it permits that to happen.

Originally adopted nearly 100 years ago, the clause provides that in exchange for full American copyright protection for a work by an American author, the work must be printed and bound in the United States or Canada. The manufacturing clause has been key to the development and continued vitality of the American printing industry, the seventh largest industry in the country.

This is no time to cut off its protections for American businesses which are faced with piracy and high tariffs abroad. Nor is it time to jeopardize American jobs by encouraging printing to move off our shores in search of cheap labor.

Today, the subcommittee will consider two alternative approaches to extending the manufacturing clause. S. 1938, introduced by Senator Metzenbaum, would simply extend the current clause indefinitely.

S. 1822, introduced by Senator Thurmond, would make some significant changes in the current clause. It would permit any country to become exempt from the clause if the country provides copyright protection for the works of American authors, and has no material tariff or nontariff trade barriers to the printing trade. It expands the definition of works covered and eliminates the Canadian exemption contained in the current law.

I am a cosponsor of both of these bills. They are alternative proposals and not in conflict with each other. Today's hearing will explore the relative advantages of each approach.

I know that the sponsors of both bills share my views and that we can work together to fashion legislation which preserves the important protections of the manufacturing clause and which will have the best chance of becoming law.

I recognize that there are those who argue that both of these approaches should be rejected. They argue that permitting the clause to expire will primarily benefit American authors and American publishers. While I don't doubt the sincerity of that argument, I think it is just plain wrong.

If we permit the manufacturing clause to expire, the primary beneficiaries will be countries which have imposed high tariff and nontariff barriers to American printed works, countries which fail to protect American copyrights and permit flagrant pirating of American books, and countries which countenance and even encourage unfair trade practices.

At a time when our trade deficit has reached record proportions, we cannot afford to grant an unreciprocating concession to those countries.

Senator MATHIAS. We have been joined by the distinguished chairman of the full committee, and I wonder if he has any questions.

The CHAIRMAN. Mr. Chairman, I ask unanimous consent that my opening statement follow your statement in the record to save time.

Senator MATHIAS. Without objection, so ordered.

The CHAIRMAN. I had to go to the White House to a leadership meeting and just returned.

Senator LEAHY. Did you straighten everything out, Mr. Chairman?

The CHAIRMAN. Oh, it is all straight. All you have got to do is just vote with us. [Laughter.]

Senator LEAHY. That is what I have been doing all these years and that is what caused the problem.

The CHAIRMAN. Now, Mr. Chairman, I am very much interested in this piece of legislation. The Office of the U.S. Trade Representative felt that some countries in the Pacific Rim were close to developing meaningful copyright laws.

Would not the bill which I introduced along with Senator Leahy encourage these countries to enact these laws to be exempt from the manufacturing clause? Mr. Cooper, do you want to answer that?

Mr. COOPER. It seems to me that S. 1822 embodies the spirit of many of the same types of things we put in recent bills; for example, the intellectual property provisions of GSP, which certainly are a carrot-and-stick approach. As long as countries are providing intellectual property protection, they can retain their GSP status; if they do not, their GSP status can be removed.

The only difference in our approach and that approach is that we are focusing in on one single part, and that is printing, and we feel like printing is such a small part of the overall intellectual property area that without that specific reference, we might be dragged along with some other aspect of corrective action.

The CHAIRMAN. Is it not true that our legislation would close the loophole that currently exists in the manufacturing clause which allows a U.S. author to transfer rights of reproduction to a foreign agent and thereby circumvent the intent of the clause by exercising the transfer right given by the U.S. author?

Mr. COOPER. It does appear to do that. One of the things that we examined in working with your staff in developing this bill is those aspects of the manufacturing clause which we felt were unenforceable, inconsistent or, in some cases, irrational.

That provision seemed to us to be an enormous loophole because of the ability to transfer rights and thereby totally escape the provisions of the manufacturing clause.

The CHAIRMAN. So S. 1822 would prohibit this type of activity that violates the very spirit of the manufacturing clause?

Mr. COOPER. Yes, sir, we feel it would.

The CHAIRMAN. Now, Mr. Chairman, I think the only thing additional other than my statement is I just want to say that we feel this legislation will help to retain jobs in the United States. That was the main fight we had before when we had to override the President on this point several years ago.

That is what we are trying to do, maintain jobs in this country. Is it your opinion that this bill would help do that?

Mr. COOPER. Yes, sir, I do not think there is any question that it would, and I think that more significantly the absence of it would cost jobs. I think that is something we all have to keep in mind.

Particularly, the notion that we would let it go without getting anything in return seems unnecessary.

The CHAIRMAN. I might call attention to the fact and see if you agree with this—I believe a Department of Labor study estimated that eliminating the clause would cause a loss of up to 172,000 jobs in the printing industry and a total loss of as many as 367,000 job opportunities throughout the economy as a result of foreign competition.

Simply stated, the bill that we introduced, Senator Leahy and I and others, is about American jobs. Will jobs in the American printing industry be saved or will they be stamped out by unfair foreign competition? Is that not the real issue?

Mr. NORTON. I think from our point of view, that is the real issue, Senator. We may be divided on how to attain that goal, but I think we share that common approach.

The CHAIRMAN. So what we are trying to do is save American jobs?

Mr. NORTON. That is correct.

The CHAIRMAN. Thank you very much, Mr. Chairman.

Senator MATHIAS. Thank you, Mr. Chairman.

Senator Metzenbaum.

STATEMENT OF HON. HOWARD M. METZENBAUM, A U.S. SENATOR FROM THE STATE OF OHIO

Senator METZENBAUM. Well, I think we are all agreed we want to save American jobs, but I think there is some difference of opinion as to how you approach the problem.

I am quite confused, Mr. Cooper and Mr. Prine, as to how you save jobs when, under S. 1822, you make it possible to take the printing jobs overseas as long as there is this reciprocity.

I have great difficulty in comprehending where you are coming from in representing the printing industry and representing Don-

nelley & Sons on S. 1822, because there is not any question—as I read it—if Korea or Malaysia or Taiwan or any place else works out this problem of reciprocity and you can go in there and compete with American workers earning \$14-an-hour help with 20-cent-an-hour workers. I have great trouble in understanding how you are saving jobs under S. 1822.

Mr. PRINE. Well, your point is very well made, Senator. Let me say we have been under enormous pressure from elements of the Government and elements of the Congress to let go of this clause.

Senator METZENBAUM. To let go of this what?

Mr. PRINE. To let the manufacturing clause expire. If we had our own preference, I think that the other bill, provided the Canadian exemption were repealed, would be our preference; that would protect more jobs.

Senator METZENBAUM. I could not agree with you more, sir.

Mr. PRINE. Because of this tremendous pressure that we have had from elements of both the executive and the legislative branch—and I will be frank with you, we have had more over in the House than we have had in the Senate—S. 1822 represents a kind of a compromise bill where at least if we give up the clause in respect to certain countries, we would be able to have some lowering of their tariff barriers so we could sell into those countries and at least support more jobs here by exports into those countries.

Senator METZENBAUM. But are you not really kidding yourself, and are you not kidding yourself, Mr. Cooper, when you say you are going to sell into those countries? You might sell into Canada, you might sell into England, you might sell into West Germany, but you are not going to sell much that is printed in this country into some of those countries where they can print for one-tenth the cost per hour that you print for.

Mr. PRINE. We are not going to sell into those Pacific Basin countries, Senator, but if we can get rid of this intellectual piracy which is depriving American producers and publishers of hundreds of millions of dollars each year, then we gain access to the other markets which they now serve.

Senator METZENBAUM. I understand the intellectual piracy question, but I must confess, and I have to leave here very promptly, that I am having trouble with the industry position because I believe that does provide for the exporting of jobs.

In the same sense, I am having trouble with the union position which continues to provide for an exemption for Canada. I say openly that I am very seriously considering changing S. 1938 to eliminate the Canadian exemption.

I understood Mr. Prine and Mr. Cooper to say—I thought you said something about that you had urged increases in tariffs in Canada. Did I hear you right?

Mr. COOPER. No, no. We have already had meetings with our counterparts in Canada with the goal of lowering those tariffs. In fact, it is they who raised the issue that they would be willing to lower tariffs.

I might point out that we agree with you completely about the fact that we are not going to export tremendous amounts of material into Singapore or Taiwan or Malaysia, except to the extent that they might accompany other United States products that would be

sold into those countries. We would benefit by an overall improvement in trade relations.

Canada is such an enormous part of our exports in printing that a change in that area would be a tremendous benefit to us.

Senator METZENBAUM. Would you support S. 1938 if we also provided for an elimination of the Canadian exemption?

Mr. COOPER. Mr. Chairman, we support S. 1938 now. The reason we supported S. 1822 was that we have met obstacle after obstacle for many decades on this issue and we are trying to save what we can out of it.

We have the opposition of the subcommittee chairman in the House, who has indicated that he would continue to oppose a bill such as S. 1938, and obviously that is a major concern to us. Obviously, the veto was a major concern to us.

Senator METZENBAUM. Mr. Norton, I am not going to ask you your position, because it is my understanding your union has members both in the United States and in Canada. Is that correct?

Mr. NORTON. Yes, we do, sir.

Senator METZENBAUM. And I will act upon my own without consulting with you on that subject because I think it puts you in an untenable position. [Laughter.]

Mr. NORTON. May I applaud your wisdom and prudence? [Laughter.]

Senator METZENBAUM. Having said that, Mr. Chairman, I must excuse myself. Thank you.

Senator MATHIAS. Thank you, Senator Metzenbaum.

There is just one more element that I think I ought to raise, so that the record is not confused here. I do it reminding you that I have invited you to make further comments.

We have asked the Department of Labor for an updating of the 1981 study, but those of you who have followed this issue closely will remember that the methodology that was used by the Labor Department in 1981 was severely criticized and that the estimate that there would be a 300,000 job loss was not universally accepted.

The Congressional Reference Service made a study at the same time and, as I recall, it estimated that the job loss would be more on the order of magnitude of somewhere between 5,000 and 10,000 which, of course, is a lot different from 300,000.

The International Trade Commission made its independent study, and I think came up with an estimate even lower than the Congressional Reference Service. The Copyright Office, I think, had a similar conclusion. So I think it is perhaps erroneous to say that Congress had accepted the 1981 Labor Department study. The 1976 Reports on Copyright Revision came to the conclusion that there was no economic justification for the manufacturing clause.

I must lay that history out because I think it is very pertinent to your testimony and will be pertinent to whatever other comments you decide to make.

Mr. PRINE. Could I make one last comment on that, Senator?

Senator MATHIAS. Surely.

Mr. PRINE. I recognize what you say and it certainly proves that economics is not a science. Some of those numbers are low because they confined themselves to a particular product like books, and in other cases they did not pick up supplier industries.

But, also, please bear in mind the point that I made earlier about the current cost and price projections being really not well supported, because they really cannot project what the future is going to be. I have a lot of suspicion about a lot of those numbers, too. We do not know exactly what the job loss will be, but it will be large.

Senator MATHIAS. I am going to submit the rest of my questions to you in writing, with one exception because we do have to look at this in a comprehensive way. What we are suggesting here is that we provide protection to the printing industry by way of the copyright laws.

Now, similar protection could be provided through the tariff laws or through nontariff barriers, which would then leave the authors, the creators of copyrighted products, free from interference.

So this really is a query and one to ponder a little. Would we be setting a precedent which, in light of our disastrous trade deficit, might be followed in other fields and create long-term problems for us?

Suppose we would say that an inventor who wanted full patent protection would have to guarantee that his invention be manufactured in this country, which is, in essence, what we are saying to the copyright holders.

Mr. COOPER. Mr. Chairman, if I may comment on that, I think perhaps Mr. Quigg from the Commerce Department could reinforce this. It is my understanding, and I am no expert on patents, that that law is, in fact, in place in many countries of the world where you do have to work a patent in that country in order to have the patent in that country.

So that is not at all something unheard of in international commerce.

Senator MATHIAS. I am not saying it is unheard of; I am asking if it is it a good idea.

Mr. COOPER. Frankly, we agree with your concern about using the copyright mechanism for a trade issue. Because of our nonexpertise in the trade area, we sought out competent counsel to help us draft a trade solution to this problem and, in fact, retained former Deputy Trade Representative Dave McDonald.

We frankly were unable to come up with a solution that dealt with the particular problem at hand. The existing trade law simply does not provide the kind of mechanism that we need to deal with the issue.

Mr. SAMUEL. Could I add, Mr. Chairman, that the first panel, several speakers, commented on the possibility or even likelihood of retaliation on the part of some of our trading partners.

First of all, this is very unlikely. Most of them have very beneficial trade balances with us and they are in no position to take retaliation. But besides that, I think if we continue the manufacturing clause, it is less likely to encourage or motivate retaliation than if we start out on a new path entirely, which could possibly have unpredictable results.

Senator MATHIAS. I think that is a wise observation. Of course, in this whole area we shoot an arrow into the air and where it falls we know not. So I think we need to devote as much time as we can at this point to looking at the probable consequences of our actions in order to avoid whatever problems may be lying out there.

Thank you all for being here. We will propound further questions to you, and feel free to pick up on any comments that are made at any point in the hearing. We want to get as much information and as much thought as we can into the record.

Senator MATHIAS. Thank you.

Mr. PRINE. Thank you, Senator.

Mr. SAMUEL. Thank you.

Senator MATHIAS. Our third panel will be Mr. Irwin Karp, counsel of the Authors League; Secretary Hoopes, the president of the Association of American Publishers; Ms. Rebecca Ratliff, head children's librarian of the Bethesda Regional Public Library; Mr. Marc Cheshire, editorial director of Books for Young Readers, Henry Holt; and Andrew Stewart, president of Stewart, Tabori & Chang, publishers in New York.

Shall we start with Mr. Karp?

STATEMENT OF A PANEL CONSISTING OF IRWIN KARP, COUNSEL, THE AUTHORS LEAGUE OF AMERICA, NEW YORK, NY; TOWNSEND HOOPES, PRESIDENT, ASSOCIATION OF AMERICAN PUBLISHERS, WASHINGTON, DC; MARC CHESHIRE, EDITORIAL DIRECTOR, BOOKS FOR YOUNG READERS, HENRY HOLT & CO., NEW YORK, NY; REBECCA RATLIFF, HEAD CHILDREN'S LIBRARIAN, BETHESDA REGIONAL PUBLIC LIBRARY, BETHESDA, MD; AND ANDREW STEWART, PRESIDENT, STEWART, TABORI & CHANG, NEW YORK, NY

Mr. KARP. Mr. Chairman, thank you for the opportunity to—

Senator MATHIAS. Mr. Karp, as a veteran witness before this committee, you know our red and green light system, so we will ask you to stick as close to 5 minutes as you can.

Mr. KARP. Thank you, Mr. Chairman.

Our first and fundamental objection to the manufacturing clause is that it violates the first and fifth amendments of the Constitution and the copyright clause of the Constitution, article I, section 8.

We have submitted to the subcommittee and its members a copy of the brief filed by the Authors League and the Association of American Publishers in the U.S. Court of Appeals in the Second Circuit in a suit we brought to have the act declared unconstitutional for these reasons.

We ask, Mr. Chairman, that our brief be included in the record, because I do not propose to take your time arguing the first and fifth amendments at this hearing.

Senator MATHIAS. I will direct that that brief be made a part of the record.

Mr. KARP. The case, by the way, will be argued on the week of February 17, so it is moving closer to a more definitive conclusion than we had in the district court where the trial judge never really came to confront the first and fifth amendments issues.

Senator MATHIAS. You do not hold out hope that we will have an answer by the 28th?

Mr. KARP. I hope we can solve your problem for you; yes.

The second ground for our objection is that the manufacturing clause is manifestly unfair to U.S. authors. They are the targets

and the hostages to the clause; it is their copyrights that printers and printing unions would use as a bargaining chip in areas over which authors have no control whatsoever.

I might point out that if the clause is extended, American publishers will undoubtedly increase their use of foreign authors for many books now written by American authors because by that simple switch of assignments, they can then print those books anywhere in the world and bring them into the United States without limitation under the clause as it now stands and under the extended clause, whether it be extended under S. 1822 or S. 1938, both of which we oppose as they now stand, or as they may be revised.

The manufacturing clause actually is unnecessary. U.S. publishers do not go abroad to any significant extent to publish books that they can print here. The Copyright Office report, the Congressional Reference Service report, former Register Ladd's letter to the congressional committees, and many other evidences of this fact exist.

One point I might make is that American publishers are now free to print abroad a large proportion of what they issue in this country—namely, anything in the public domain—and they have not done so.

In fact, if there is retaliation, as the Government witnesses testified and as I think there will be, it may well be that American publishers may finally be moved to retaliate too by sending abroad that which they could now print abroad but do not do of their own volition.

A preponderance of the material that the subcommittee is dealing with is not first amendment material. It is the catalogs, the calendars, and the other commercial material that Mr. Samuel referred to today and in his prior testimony.

Indeed, the great proportion of the estimated job losses in the Department of Labor study deals with that material, not books. And were books excluded—and when I say books, I mean all sorts of truly literary material—from the manufacturing clause, it would, of course, eliminate the serious first and fifth amendments problems we are dealing with.

I should point out that U.S. publishers can also avoid the clause if it is extended by other means than just using foreign authors. They can contract with foreign employers for hire who can hire U.S. authors, and the copyrights will then be those of foreign nationals and there would be no import barrier.

Of course, there are other reasons for job attrition, some of which have been mentioned today and which are probably far more significant in the printing industry than the manufacturing clause—the deficit and the high price of the dollar, the amazing advances in technology which have eliminated a number of jobs, shortrun production in this country, and indeed union policy.

I come from New York and I wonder now as I listen to some of this talk today whether this is not in a slightly different vein and style a replay of what happened when the printing unions tried to protect jobs on New York newspapers back in the fifties and sixties and cut New York newspapers and New York newspaper printing jobs by the loss of 6 of the 10 papers that were published in New York.

If we are going to have protection of a viable publishing and production industry in the United States, then we might think of a variety of means of protecting that whole complex of industrial interests.

We might, for example, prohibit the import of foreign-made printing machinery and related equipment to protect the jobs of U.S. workers who produce such material and are probably producing less of it today because American printers have in the past imported much of their equipment from abroad.

We might impose similar prohibitions against the import of foreign paper and ink and other supplies necessary for the production of books. And we might indeed, to help Senator Metzenbaum solve his job export problem, prohibit U.S. book manufacturers from owning foreign subsidiaries or affiliated companies and thus prevent them from exporting those jobs abroad to their foreign associates.

We might even, if we were really going to be fair about it, provide for a Federal mechanism to protect publishers and authors against excessive prices charged by publishers and inefficient production caused perhaps by union policy.

In other words, if we are going to go the socialist route which the manufacturing clause has long placed us on, why do we not go the whole way? If we are not going to rely on the free marketplace to deal with these problems when it comes to importing books, why not protect everybody involved by total Government intervention to assure some measure of fairness?

I might also point out that, as you have indicated, if we are really worried about job loss, we should long ago have placed a manufacturing clause in the Patent Act and even one in the Lanham Act.

The idea that AT&T can export the manufacture of 1,700 jobs involved in making telephones from Shreveport, LA, to the Far East without any Government interference is somewhat startling.

If we had a manufacturing clause in the Patent Act and in the Trademark Act, and if AT&T were faced with the loss of patent protection for those phones and the inability to protect its trademarks if they were used on the imported copies, the 1,700 jobs may have never gone out of Shreveport to begin with.

Lastly, I should stress that S. 1822 will not really allow for reciprocity. Both of its criteria for certification are vague; the first would not cover clearly every country that we have reciprocal copyright relations with.

As to the second criterion, proponents of the bill have already indicated that they find in every advanced country some form of trade barrier that would prevent that country from being certified.

So I think Senator Metzenbaum's fears about establishing reciprocity are not well founded.

Lastly, I should come back to the major point that concerns authors, in addition to the perpetuation of the manufacturing clause; namely, that S. 1822 would increase the burdens far beyond those now placed by the current clause.

It would eliminate the Authors League exemption, which is not a foreign agent's exemption. It is an exemption put in the clause to at least give it some modicum of first amendment respect.

When an American author has to go abroad to have his book published and has it published abroad by a foreign-owned publisher, not by an American publisher, the clause now provides for an exemption from the clause for copies sent into this country by the foreign publisher.

I should also note that the S. 1822 criteria eliminate to a very serious extent protection for U.S. copyrights when books are imported into the United States, going even to the extent of providing that a pirate publisher in this country has a complete defense to an infringement suit even though the copyright owner of the books did not authorize the importation, but they came in in some unauthorized fashion.

Thank you very much.

[Submissions of Mr. Karp follow:]

PREPARED STATEMENT OF IRWIN KARP

My name is Irwin Karp. I am counsel to The Authors League of America, the national society of professional authors, representing 14,000 writers and dramatists. The League's members who write non-dramatic literary works are the primary targets of the Manufacturing Clause, which will (by its terms) expire on July 1, 1986. The Authors League appreciates this opportunity to present its views on S. 1822 which would revise the Manufacturing Clause and freeze it permanently into the Copyright Act.

The Authors League opposes S. 1822 and urges that Congress reject any extension of the Manufacturing Clause and permit it to expire this summer.

1. Constitutional Objections

The Authors League believes that the Manufacturing Clause of the Copyright Act (Secs. 601 and 603 (a) and (c)) violates the First and Fifth Amendments, and the Patent and Copyright Clause of the Constitution (Art. 1, Sec. 8, Cl. 8). Our reasons are set forth in the brief filed by the League, the Association of American Publishers and me in the U.S. Court of Appeals (2nd Circuit), in support of our appeal in the suit we brought for a judgment declaring the Manufacturing Clause unconstitutional. Copies of our brief have been sent to the members of the Subcommittee, Chairman Thurmond and the co-sponsors of S. 1822. I ask that a copy of the brief be included in the record of this hearing

2. The Manufacturing Clause Is Unfair
and Damaging To U.S. Authors

Extension of the Manufacturing Clause, by enacting S. 1822 or perpetuating its present text (as other Bills propose), grossly discriminates against U.S. authors and exposes them to serious injury. If a real cost advantage of foreign manufacture exists, as the book-manufacturing industry and AFL-CIO assert, our publishers can

manufacture a great number of books abroad to gain that benefit, without violating the Clause. U.S. publishers can do so by choosing a foreign author, rather than a U.S. author, to write many of the books they decide to have written every year: non-fiction titles, textbooks, childrens' books, and many other categories. If the additional cost benefit exists, it is not difficult for large U.S. publishers, to shift from U.S. to foreign authors to avoid the embargo of the Clause; these firms now issue books by American writers who live and work thousands of miles from their publishing headquarters, and by foreign authors all over the world. The victims of a permanent Manufacturing Clause would be U.S. authors, who will be placed at a severe disadvantage in their competition with foreign authors for the limited number of places on the annual publishing lists of U.S. publishing firms. U.S. authors will suffer. U.S. book manufacturers and their employees will not benefit -- they will not get the work.

3. The Manufacturing Clause Is Unjustified

The Manufacturing Clause imposes an unjustifiable burden on one class of U.S. citizens, authors of nondramatic literary works, to theoretically protect U.S. book manufacturers and their employees from foreign competition.

(a) The July, 1981 Copyright Office report demonstrated that U.S. publishers will not turn to foreign manufacturers to any significant extent, if the Clause is allowed to expire. pp. 132-134.

(b) Extension of the clause will not prevent foreign manufacture of the great preponderance of copyrighted "nondramatic literary works" by U.S. nationals, since these consist of commercial products, advertising, business forms, and other non-book materials, (See: the testimony of AFL-CIO Industrial Union Department President, Howard Samuel, quoted at p. 30 of our brief), and most of this material relies so little on copyright protection that it would be made abroad if cost differentials warranted, even if that resulted in loss of copyright protection. The 1982 Department of Labor Report

produced its high-yield job loss estimate largely on the basis of manufacturing of these non-book materials; and indeed included materials that were not copyrightable or for which copyright protection was not sought. The Report cautioned,

"estimates of employment opportunity losses should be interpreted with care. The lack of certain basic data, such as the percentage of printed materials in each sector that is actually copyrighted, made necessary the approaches employed here, and prevented more accurate point estimates." (p. 12)

(4) Extension of the Manufacturing Clause
Will Provoke Retaliation Abroad

As the Copyright Office noted, in its 1981 Report,

"Alone among developed nations, and virtually alone in the world, the United States, by virtue of the manufacturing clause, controls international commerce in books by controlling the freedom of choice of some of its copyright owners."

The means chosen by other nations to control (duties, quotas, licenses, exchange restrictions and the like) are costs for entrepreneurs to take into account when they consider where print their works; the manufacturing clause prevents certain U. S. copyright proprietors from even making such considerations." (p. 130)

Other witnesses probably will have informed you of the decision that the United States violated its obligations under GATT when Congress extended the manufacturing clause in 1982. A similar ruling, and an award of damages, is likely to follow any further extension. Moreover, many of the developed countries which are net importers of U.S. printed works probably will find a further extension the last straw and retaliate in kind against the U.S. -- adopting U.S.-model manufacturing clauses that will shut the door to copies produced by U.S. manufacturers and their employees.

(5) The Certification Process Does Not
Eliminate The Inequities of The Clause

While Section 4 of S. 1822 ostensibly would exempt foreign nations from the manufacturing clause if the Trade Representative certifies they have satisfied its conditions, the provision is in reality only cosmetic, and will not relieve U.S. authors or placate nations which do not embargo the products of U.S. book manufacturers

under U.S.-style manufacturing clauses. The first requirement for certification -- "adequate and effective" copyright protection for foreigners -- is too ambiguous. The second requirement -- "no material non-tariff barriers" -- will exclude most developed nations from certification. Private-sector proponents of S.1822 have already claimed these countries have non-tariff provisions that constitute barriers which would bar them from certification.

We believe that the manufacturing clause created by S. 1822 would violate the Constitution for the reasons discussed in our brief. In addition, we submit that Congress cannot constitutionally condition the restriction of exclusive rights granted to authors under authority of Article I, Section 8, on the administrative determinations called for by Sec. 4 of S. 1822.

6. There Are Other Means of Protection

There are other means of protecting U.S. book manufacturers from foreign competition without violating the constitutional rights of U.S. authors and subjecting them to an unfair and damaging embargo. The July 1981 Copyrights Office Report said,

"The death of the (manufacturing clause) will not leave American [book manufacturing] interests unfairly exposed to foreign competition. The ITC (International Trade Commission) can recommend and the President can impose duties, quotas and orderly marketing arrangements if imports harm American interests." (p. 131)

See also the 1982 testimony of Assistant Register of Copyrights Anthony Harrison, quoted at page 31 of our brief.

7. If Manufacturing Clauses Are a Fair and Effective Weapon Why Stop (or Start) With Books ?

Congress purports to find authority for the Manufacturing Clause in the Patent and Copyright Clause of the Constitution, which authorizes it to grant to "authors and inventors the exclusive rights to their respective writings and discoveries." But in granting exclusive patent rights to inventors, Congress has never imposed a manufacturing clause restriction in the Patent Act: (i) to prohibit the importation or distribution of machinery, equipment and other

devices protected by U.S. patents granted to U.S. nationals; or, (ii) as in Sec 601, to give domestic manufacturers who infringe those patents a complete defense based on importation in violation of such a manufacturing clause.

Yet in the last three decades, vast numbers of U.S. manufacturing jobs have been exported to other countries, whose manufacturers produce and export to this country enormous quantities of products that are protected by such U.S. patents -- and, we should add, U.S. trademarks owned by U.S. corporations who exported many of those jobs.

Congress has chosen not to impose a patent/manufacturing clause in the Patent Act, or a trademark/manufacturing clause in the Lanham Act, to protect U.S. manufacturers against foreign competition and save the jobs of hundreds of thousands, perhaps millions, of American workers, without violating anyone's First Amendment rights. The estimated job losses in the printing industry (though highly speculative and probably grossly exaggerated) are miniscule compared to the job losses in industries producing products protected by U.S. patents or trademarks. The absence of a manufacturing clause in the U.S. Patent Act or Lanham Act would seem to reflect the judgment that manufacturing clauses are not a wise, fair or prudent method of dealing with competition by foreign manufacturers, or that Congress should single out only U.S. authors of non-dramatic literary works in English from all the classes of individuals and major corporations protected by U.S. patents, trademarks and copyrights to be subjected to the burden of a domestic-manufacture embargo, even though that embargo would do far more social and economic good if applied in other areas of the economy where it is needed far more urgently ^{and} ~~so~~ where serious First Amendment interests would not be affected.

B. Additional Burdens Imposed By S. 1822

S. 1822 adds several new burdens, hardships and inequities to the present manufacturing clause.

(a) S. 1822 would eliminate the so-called "Authors League Exemption", Sec. 601 (b)(7), which allows importation of a U.S.

author's work if its first publication took place abroad, was done by a foreign publisher, and no distribution of American-made copies had been made in this country. This clause is essential for U.S. authors who have to seek foreign publishers. Its elimination is grossly unfair, and egregiously punitive.

(b) S. 1822 deletes a crucial sentence from Sec. 601 (d), namely "Importation or public distribution of copies in violation of this section does not invalidate protection of a work under this title." This might restore much of the draconian effect of the 1909 Act's manufacturing clause, and is a totally unjustified threat to U.S. authors' copyrights, and the protection of rights to use a non-dramatic literary work in other media than publishing.

(c) The proposed amendment to Section 601(d) also is made more dangerous by invoking its legislative protection of pirates against infringement suits even where copies of a target-literary work were imported without consent of the copyright proprietor. This is unfair, and unconstitutional. Congress cannot deprive a U.S. author of copyright protection because someone else imported copies of his/her literary work.

The Authors League thanks the Subcommittee for this opportunity to present the views of American authors. We urge that the manufacturing clause be allowed to expire on July 1, 1986 and that S. 1822 and other bills to extend the clause be rejected by the Congress.

85-6346

United States Court of Appeals FOR THE SECOND CIRCUIT

THE AUTHORS LEAGUE OF AMERICA, INC., and
IRWIN KARP,
Plaintiffs-Appellants,

THE ASSOCIATION OF AMERICAN PUBLISHERS, INC.,
Plaintiff-Intervenor-Appellant,

v.

RALPH OMAN, Register of Copyrights; JAMES A. BAKER, III,
Secretary of the Treasury; and WILLIAM VON RAAB,
COMMISSIONER, United States Customs Service,

Defendants-Appellees.

BRIEF OF APPELLANTS THE AUTHORS LEAGUE OF AMERICA, INC., IRWIN KARP, AND THE ASSOCIATION OF AMERICAN PUBLISHERS, INC.

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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THE AUTHORS LEAGUE OF AMERICA, INC., and	:	
IRWIN KARP,	:	No. 85 - 6346
	:	
Plaintiffs-Appellants,	:	
	:	
THE ASSOCIATION OF AMERICAN PUBLISHERS, INC.,	:	
	:	
Plaintiff-Intervenor-Appellant,	:	
	:	
v.	:	
	:	
RALPH OMAN, Register of Copyrights; JAMES A.	:	
BAKER, III, Secretary of the Treasury; and	:	
WILLIAM VON RAAB, COMMISSIONER, United States	:	
Customs Service,	:	
	:	
Defendants-Appellees.	:	

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BRIEF OF APPELLANTS THE AUTHORS LEAGUE
OF AMERICA, INC., IRWIN KARP, AND
THE ASSOCIATION OF AMERICAN PUBLISHERS, INC.

PRELIMINARY STATEMENT

This brief is submitted by The Authors League of America, Inc. ("the Authors League"), Irwin Karp ("Karp") and The Association of American Publishers, Inc. ("AAP") in support of their appeal from the Opinion of the Honorable Gerard L. Goettel of the United States District Court for the Southern District of New York, dated October 8, 1985 (A 29-54)*, granting defendants-appellees' motion for summary judgment and denying the motion of the Authors League, Karp, and AAP for summary judgment, and from the Judgment dismissing the

* References preceded by "A" are to pages of the record reproduced in the Joint Appendix.

complaint, entered on October 17, 1985. The opinion is officially reported at 619 F. Supp. 798 (S.D.N.Y. 1985).

THE ISSUES PRESENTED FOR REVIEW

This case involves the Manufacturing Clause of the U.S. Copyright Act (17 U.S.C. Secs. 601, 603(a) and (c)), which prohibits U.S. authors and their publishers from importing and distributing in this country foreign-made copies of English-language literary works by those authors if they have U.S. copyrights. This appeal presents for review the following issues:

1. May Congress, despite the First Amendment, prohibit U.S. authors and publishers from importing and distributing here foreign-made copies of literary works that have U.S. copyrights?

(a) Does the Congressional power to establish conditions for granting copyright permit it to restrict rights guaranteed by the First Amendment and thus prohibit the importation or distribution of literary works protected by the First Amendment?

(b) Does a U.S. copyright in a work limit the author's and publisher's First Amendment protection to its ideas, and foreclose that protection for its expression or content, or for their freedom to distribute copies or choose a foreign printer?

(c) Is the import and distribution ban of the Manufacturing Clause "content neutral" to the extent that it does not infringe authors' and publishers' First Amendment rights?

(d) Does the Constitution's patent and copyright clause prevent Congress from prohibiting the importation or distribution of foreign-made copies?

2. Does the First Amendment guarantee U.S. authors and publishers the rights to import and distribute foreign-made copies of English-language literary works by those authors and prohibit Congress from restraining those rights by enacting or enforcing the Manufacturing Clause?

3. Does the Manufacturing Clause's discrimination against U.S. authors of English-language literary works, its sole target, and its underinclusiveness violate the First Amendment?

4. Does the Manufacturing Clause's overbreadth and overinclusiveness violate the First Amendment?

5. Is the Fifth Amendment violated by the discrimination and unequal protection resulting from Congress's reliance on the Patent and Copyright clause to impose the restraints of the Manufacturing Clause?

STATEMENT OF THE CASE

Nature of the Action

This suit seeks a judgment declaring that the Manufacturing Clause unconstitutionally prohibits the

importation and distribution in this country of foreign-made copies of English-language literary works by United States authors, in violation of the First and Fifth Amendments. Plaintiffs sought an order enjoining defendants from enforcing the Manufacturing Clause.

The Parties

Plaintiffs-Appellants are Karp, author of a copyrighted pamphlet entitled "Fundamental Requirements of the Copyright Act" ("Fundamental Requirements"); the Authors League, a national society of 11,000 professional writers and playwrights; and AAP, a national association of about 300 American book publishers, which account for about 70% to 75% of the dollar volume of all books published in the United States annually.

Karp and the Authors League challenged the constitutionality of the Manufacturing Clause as applied to the pamphlet "Fundamental Requirements." The Authors League and AAP also challenged the Clause as representatives of their author and publisher members who are subject to it.

Defendants-Appellees are Ralph Oman, Register of Copyrights, who is responsible for administering provisions of the Manufacturing Clause, including the issuance of Import Statements under section 601(b)(2); Secretary of the

Treasury JAMES A. BAKER, III, who is required by section 603 to enforce the import prohibitions of section 601(a); and Commissioner of the Customs Service WILLIAM VON RAAB, who is responsible for enforcing the import prohibitions of section 601(a) under the Secretary of Treasury's direction and pursuant to sections 601(b)(2) and 603(c).*

The Statutory Provisions at Issue

Sections 601 and 603(a) and (c) (set forth in attached Addendum) were enacted on October 19, 1976 as part of the Copyright Revision Act, Pub. L. 94-553. Section 601 by its terms expired on July 1, 1982. On July 13, 1982, however, it was extended, retroactively to July 1, 1986, by an override of a Presidential veto which passed Pub. L. 95-215.**

Section 601(a) prohibits "the importation into or public distribution in the United States of copies of a work consisting preponderantly of nondramatic literary material that is in the English language and is protected

* Section references, unless otherwise indicated, are to sections of the United States Copyright Act, 17 U.S.C.

** The vote was 84 to 9 in the Senate and 324 to 86 in the House of Representatives. A Bill is now pending in the House of Representatives (H.R. 3465, 99th Congress, 1st Session) "To make permanent the requirements of the manufacturing clause of the copyright law." A Bill is now pending in the Senate (S. 1822, 99th Congress, 1st Session) to revise the clause and make it a permanent provision of the Copyright Act.

by this title . . . unless the portions consisting of such material have been manufactured in the United States or Canada."

The section has an extraordinarily narrow scope. It does not apply to works with less than 50% English-language text. It does not apply to nondramatic literary works in other languages nor to public domain materials. It does not apply to films, music, plays, art or other categories of nonliterary copyrighted works. Under section 601(b)(1), the prohibition does not apply if the author is a foreigner domiciled abroad or a U.S. author domiciled abroad for at least a year prior to the importation of the foreign-made copies.

The prohibition also does not apply to non-dramatic literary works in English which were written as "work made for hire" for foreign employers, regardless of the author's nationality or domicile. Nor does it apply to a work first published abroad by a foreign publisher if the author is paid for U.S. distribution rights, there has been no prior publication of U.S.-made copies, and the manufacturer of the foreign-made copies is a foreigner. Finally, up to 2,000 copies of a nondramatic literary work in English by a U.S. national or domiciliary can be imported if an Import Statement is issued by the Copyright Office.

The import ban of Section 601(a) is enforced in several ways. Section 601(d) denies protection of publishing rights to a work if copies are imported in violation of Section 601(a). Section 603(a) requires the Secretary of the Treasury to make regulations for enforcement of the import prohibitions. Section 603(c) provides for seizure and forfeiture of copies imported in violation of section 601(a) and their destruction or return to the country of export.

The Proceedings Below

After discovery was completed, the parties made cross-motions for summary judgment. The District Court granted the defendants' motion for summary judgment, holding that Congress had constitutional authority to impose the Manufacturing Clause as a condition of copyright and that it did not violate the First or Fifth Amendments.

STATEMENT OF FACTS

The six-page pamphlet, "Fundamental Requirements," (Exhibit A*) is a non-dramatic literary work in English, written and copyrighted by Karp, a U.S. citizen and domiciliary, and first published in the United States in 1977. Karp Dep. at 23-25, 28. A Certificate of Copyright Registration

* Exhibit references, unless otherwise indicated, are to exhibits attached to defendants' deposition of the Authors League and Karp. The deposition transcripts and exhibits are on file with the Court.

(Exhibit B) was issued for the pamphlet by the Register of Copyrights on June 25, 1982.

In the summer of 1982, after enactment of the bill extending the Manufacturing Clause, Karp and the Authors League had 6,000 copies of "Fundamental Requirements" printed in England. Karp Dep. at 25-26, 39-40; Exhibit C and D. The Authors League sent the British printer a check for 300 & 50/100 pounds Sterling in payment for manufacturing the 6,000 copies (Exhibits H and I) which it cashed. Karp Dep. at 38-39.

On August 16, 1982, Karp sent a letter to Marybeth Peters of the United States Copyright Office (Exhibit J) accompanied by Requests for Issuance of Import Statements to Karp and the Authors League, respectively, each to cover 3,000 copies of the pamphlet (Exhibits J and K). Ms. Peters responded to the requests on August 19, 1982, in a letter (Exhibit M) stating that the Import Statements could not be issued. The letter said, in part,

"Since your work (Fundamental Requirements) falls into the category of material required to be manufactured in this country in order to be lawfully distributed here, an import statement for 2,000 copies could be issued. However, the requests for import statements that you presented are each for 3,000 copies. Import statements for 3,000 or 6,000 copies cannot be issued." (Emphasis supplied)

Under section 601(b)(2) only "a total of no more than two thousand copies" of "Fundamental Requirements" manufactured abroad can be imported and "lawfully" distributed in the United States. Section 601(a) flatly prohibits the importation or distribution of any of the additional copies which the Authors League and Karp had had manufactured in England for the express purpose of importing them into the United States and distributing them to Authors League members and others. Had any of the 6,000 copies been imported, they would have been "subject to seizure and forfeiture in the same manner as property imported in violation of the customs revenue laws." 17 U.S.C. §603(c). Moreover, section 601(d) would have deprived them of protection against infringement of their exclusive rights under section 106 to reproduce and distribute copies.

POINT I

THE DISTRICT COURT ERRONEOUSLY HELD THAT THE PATENT AND COPYRIGHT CLAUSE PRECLUDED FIRST AMENDMENT PROTECTION FOR AUTHORS' AND PUBLISHERS' RIGHTS TO IMPORT AND DISTRIBUTE FOREIGN-MADE COPIES OF COPYRIGHTED WORKS

(A) The District Court's Holding

The Authors League, Karp and the AAP contended below that the Manufacturing Clause violated the First and Fifth Amendments for various reasons, which are discussed in Points II et seq. of this brief.

The District Court, in its opinion, did not deal directly with these arguments. Rather, it held that despite

the First Amendment Congress was entitled to ban importation of foreign-made copies of U.S. authors' English-language literary works on the grounds that Congress has unlimited power to impose conditions of copyright; the First Amendment only protects ideas and not their expression; and the Manufacturing Clause is content-neutral.

We address these holdings first and then turn, in the subsequent Points, to our discussion of why the import and distribution bans of the manufacturing clause violate the First and Fifth Amendment rights of U.S. authors and publishers of English-language literary works.

(B) Congressional Power To Establish Conditions of Copyright Is Subject to the Limitations of the First Amendment

The District Court grounded its decision on the erroneous premise that Congress may impose "whatever conditions and restrictions it sees fit" on its grant of copyright. Not so. The First Amendment provides that "Congress shall make no law ...abridging the freedom of speech, or of the press." That safeguard applies to the provisions of a copyright law no less than to any other Act of Congress.

Indeed, the conditions imposed by a copyright statute requires an even greater Congressional regard for freedom of expression, for as the Supreme Court has emphasized, "the Framers [of the Constitution] intended copyright itself

to be the engine of free expression." Harper & Row, Publishers, Inc. v. Nation Enterprises, 447 U.S. ___, 105 S.Ct. 2218, 2230 (1985). It is incongruous to decide, as did the Court below, that Congress could constitutionally deny authors and publishers -- in the law creating the "engine of free expression" -- rights the Supreme Court has held are at the core of freedom of expression, i.e. the rights to import and distribute copies of their works.

The Supreme Court has held that Congress may attach formal conditions to its copyright grant. For example, in United Dictionary Company v. G. & C. Merriam Co., 208 U.S. 260, 264 (1908), cited by the court below, Justice Holmes held that Congress could require a copyright notice -- a condition that did not impose restraint on First Amendment rights. But the Court has never held that Congress may impose conditions that restrain core First Amendment rights, such as authors' and publishers' freedom to distribute their works or determine where they shall be printed. Thus, when the Ninth Circuit Court of Appeals recently held that Congress could require, in the Copyright Act, that two copies of a copyrighted work be deposited in the Library of Congress, it cautioned that a condition which would "trigger first amendment concerns... might be invalid (since) ... the act of copyrighting is not a waiver of first amendment rights." Ladd v. Law & Technology Press, 762 F.2d 809, 815 n.5 (9th Cir. 1985) (citations omitted).

The decisions cited by the Ninth Circuit are only a few of the many Supreme Court holdings that Congress may not condition the grant of rights or benefits it chooses to bestow on the abandonment of freedoms guaranteed by the First Amendment. Thus, in Perry v. Sinderman, 408 U.S. 593, 597 (1972), the Court said:

For at least a quarter-century, this Court has made clear that even though a person has no "right" to a valuable government benefit and even though the government may deny him the benefit for any number of reasons, there are some reasons on which the government may not rely. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interests -- especially his interest in freedom of speech. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to "produce a result which [it] could not command directly." Speiser v. Randall, 357 U.S. 513, 526. Such interference with constitutional rights is impermissible.

The Court then cited a long list of its decisions applying this principle. Id. The Manufacturing Clause violates this fundamental First Amendment principle. It denies a "benefit" to authors and publishers (protection for their publishing rights) "on a basis that infringes [their] constitutionally protected interests -- especially [their] interest in freedom of speech." This, in addition to the fact that Section

601(a) contains a flat prohibition on First Amendment rights of distribution, and importation for that purpose, that Congress could not constitutionally enact as a separate statute, or enforce by regulations unrelated to the Copyright Act.

(C) The First Amendment Protects Authors' Expression of Their Ideas

The District Court reasoned that Congress could deny U.S. authors the right to import and distribute copies of their works on the theory that "[s]uch conditions . . . do not run afoul of the first amendment" (A45) because "the right to express an idea in a particular form arises from the copyright law, not from the first amendment" (A44).

The Court erred. Even if the First Amendment only protected ideas, the Manufacturing Clause prohibits their dissemination by U.S. authors and publishers who seek to distribute them in foreign-made copies of their works. But the First Amendment does protect an author's expression of his/her ideas against restraints by the Congress - or other branches of government. The Copyright Act protects an author's expression against copying by third persons, but does not, and could not, preempt the First Amendment's prohibition of Congressional restraints on author's rights to distribute their works.

The copyright cases cited by the District Court (e.g., Sid & Marty Krofft Television v. McDonalds Corp.,

562 F.2d 1157 (9th Cir. 1977)) do not hold that the First Amendment does not protect an author's expression against governmental restraints. They simply hold that the Copyright Act's prohibition against copying of the author's expression does not violate the infringer's First Amendment rights because he is free to write about the author's ideas which are not protected by copyright. And, of course, the author's copyright does not prevent the infringer from fashioning his own expression of the author's ideas.

The District Court's theory would permit the most virulent censorship of books, films and other media of expression. Innocently disclaiming any intention to censor "ideas," states or the federal government could proceed to do so by imposing restraints on the forms of expression by which the ideas are communicated. Indeed, that claim has been made in defense of governmental restraints on freedom of expression -- and rejected by the Supreme Court.

In Carey v. Brown, 447 U.S. 455 (1980), the State of Illinois argued that its anti-picketing statute (exempting only labor picketing) did not discriminate on the basis of the speaker's ideas. Rejecting this argument, the Court said, id. at 462 n.6:

"It is, of course, no answer to assert that the Illinois statute does not discriminate on the basis of the speaker's viewpoint, but only on the basis of the subject matter of his message. 'The

First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of discussion of an entire topic.' Consolidated Edison Co. v. Public Service Comm'n, 447 U.S. at 537."

In Consolidated Edison, 447 U.S. 530, 537 (1980), the Supreme Court went on to say:

"As a general matter, 'the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter or its content.' Police Department of Chicago v. Mosley, [408 U.S. 92 (1972)], at 95."

The Supreme Court has emphasized the First Amendment's protection of expression, in the cases cited above, and in other decisions. For example, in First National Bank of Boston v. Bellotti, 435 U.S. 765, 777 n.12 (1978), the Court said:

"The individual's interest in self-expression is a concern of the First Amendment separate from the concern for open and informed discussion, although the two often converge."*

Thus, the Court has invoked the First Amendment to protect authors' and publishers' expression on several occasions: e.g., Southeastern Promotions v. Conrad, 420 U.S. 546 (1975); Time, Inc. v. Hill, 385 U.S. 374 (1967); Winters v. New York, 333 U.S. 507, 510 (1948); see also, Cohen v.

* Citing this footnote, the Court later said: "Freedom of speech also protects the individual's interest in self-expression." Consolidated Edison Co. v. Public Service Comm'n, 447 U.S. at 534 n.1.

California, 403 U.S. 15, 25-26 (1971). Moreover, the Court frequently has emphasized that "Speech likewise is protected even though it is carried in a form that is 'sold' for profit." Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748, 761 (1976) (citations omitted).

In Winters v. New York, *supra*, the Supreme Court upheld a publisher's First Amendment right to distribute copies of "vulgar magazines" containing stories of deeds of blood shed and lust. The Court said that even if there were "nothing of any possible value to society in these magazines, they are as much entitled to the protection of free speech as the best of literature." And it made its oft-quoted observation that "[t]he line between the informing and the entertaining is too elusive for the protection of the basic right." 333 U.S., at 510.

(D) The Manufacturing Clause Is Content-Based

The District Court's third premise was that the Manufacturing Clause is not "content-based." But it is. If the contents of imported copies are graphic, dramatic, musical or cinematic, or literary subject matter in a foreign language, the copies can be freely imported and distributed, without numerical limits. If the contents of copies are a literary work in English, its U.S. author and publisher cannot import or distribute them. The ban

of the Manufacturing Clause is based on the copies' subject matter and contents.

As the Supreme Court emphasized in Consolidated Edison Co. v. Public Service Comm'n, supra, the First Amendment's prohibition of content-based restrictions is not limited to those imposed on "particular viewpoints"; it applies also to restrictions on "discussion of an entire topic," and to restrictions on "expression because of its message, ideas, subject matter or content." 447 U.S. at 537. See also Carey v. Brown, supra, and Police Department of Chicago v. Mosley, supra; Erznoznik v. City of Jacksonville, 422 U.S. 205 (1975). Indeed, had the Supreme Court applied the District Court's conception of what constitutes a "content-based" restriction, it would have upheld the ban it struck down in Lovell v. City of Griffen, 303 U.S. 444 (1937), for that restriction was not based on the ideas or other contents of publications restricted; it was based solely on their method of distribution within the city.

The Supreme Court stated in First National Bank of Boston v. Bellotti, 435 U.S. 765, 784-85:

"In the realm of protected speech, the legislature is constitutionally disqualified from dictating the subjects about which persons may speak and the speakers who may address a public issue. Police Department of Chicago v. Mosley, 408 U.S. 92, 96 (1972)."

The Manufacturing Clause dictates on both scores. It prohibits importation of copies because of their content --

literary works in English on the whole range of issues and subjects and topics which have First Amendment priority -- and it dictates that one class of speakers, U.S. authors (and U.S. publishers), may not distribute those contents to the readers of this country.

(E) The Constitution's Patent and Copyright Clause
Limits the Conditions Which Congress May Place
On Its Grant of Copyright Protection

The District Court assumed that Congress had unfettered discretion under the Patent and Copyright Clause (Art. I, Sec. 8, cl. 8) to place conditions on its statutory grant of copyright. We submit that that constitutional clause does limit Congress' discretion, and bars imposition of the Manufacturing Clause restrictions.

As the Supreme Court held in Graham v. John Deere Co., 383 U.S. 1 (1966), the Congressional power to grant copyrights and patents stems "from a specific constitutional provision," which is "both a grant of power and a limitation." 383 U.S. at 5. The Court warned that "Congress in the exercise of the [patent] power may not overreach the restraints imposed by the stated constitutional purpose." 383 U.S. at 6.

In imposing the Manufacturing Clause, Congress overreached its constitutional restraints and the limit of the Patent and Copyright Clause. The Supreme Court has repeatedly explained, most recently in Harper & Row v. Nation Enterprises, supra, that the purpose of the Clause was to

"create a marketable right to the use of [an author's] expression", to "suppl[y] the economic incentive" for authors that would encourage "their individual effort by personal gain," to "secure a fair return for an "author's creative labor," and thus to "stimulate [the creation of useful works] for the general good." 105 S.Ct. at 2230.

The Manufacturing Clause does not contribute to those purposes, and was not intended to do so. On the contrary, its avowed purpose is limited to protecting domestic printers against the competition of foreign printers. Stonehill Communication, Inc. v. Martuge, 512 F. Supp. 349, 350-351 (S.D.N.Y. 1981), cited with approval by the District Court. In Stonehill, Judge Weinfeld stressed that the "essential purpose" of the manufacturing clause is to be a "protectionist" shield for U.S. printers, and that "it is a burden on American authors." Id.

We submit that, under Graham v. John Deere Co., Congress had no authority under the Copyright Clause to establish a condition of copyright that clearly does not serve, or comply with, the purposes of its constitutional copyright authority. The clause does not encourage or stimulate authors; it penalizes and "burden[s]" them. While Congress may choose to protect or subsidize American printers in other ways, it cannot do so by imposing

conditions in the Copyright Act which patently overreach the restraints imposed by the constitutional purpose of the clause as clearly illuminated by the Supreme Court.

POINT II

THE MANUFACTURING CLAUSE
 PROHIBITS THE EXERCISE OF FIRST
 AMENDMENT RIGHTS GUARANTEED TO
 U.S. AUTHORS OF LITERARY
WORKS AND THEIR PUBLISHERS

- (A) The Clause Denies the
 Constitutional Rights of
Distribution and Importation

The Manufacturing Clause, by its plain terms, prohibits U.S. authors of literary works, and their publishers, from exercising one of the most important rights secured by the Amendment -- the right to import and distribute English-language copies of their works. The Clause states flatly that

"the importation into and public distribution in the United States of copies of (preponderantly non-dramatic literary works) is prohibited unless the portions consisting of such material have been manufactured in the United States or Canada." 17 U.S.C. § 601 (emphasis added).

The prohibition explicitly violates the First Amendment which guarantees these authors and publishers the uninhibited right to distribute foreign-made copies of their works in this country, and to import them for that purpose. It is supplemented by enforcement provisions which also violate the First Amendment right of distribution and importation. 17 U.S.C. §§ 601(d), 603(a) and (c). Could Congress enact such a prohibition de hors the Copyright Act,

applying it to all such literary works, whether or not copyrighted?

The Supreme Court has repeatedly ruled that statutes and other state actions which restrain First Amendment rights of distribution are unconstitutional and invalid. Lovell v. Griffen, 303 U.S. 444, 452 (1938); Smith v. California, 361 U.S. 147, (1959); Bantam Books v. Sullivan, 372 U.S. 58, 65 n.6 (1963); Lamont v. Postmaster General, 381 U.S. 301 (1965); Ex Parte Jackson, 96 U.S. 727, 733, 736 (1877).

In Lovell v. Griffen, supra, the Supreme Court stated the principle, applied by it many times since then, rejecting defendants' argument here:

"The ordinance cannot be saved because it relates to distribution and not to publication. 'Liberty of circulating is as essential to that freedom [of the press] as liberty of publishing; indeed, without the circulation, the publication would be of little value.' Ex Parte Jackson, 96 U.S. 727, 733."

Since the Manufacturing Clause so patently restrains freedom of distribution, it is void on its face and must be declared unconstitutional. Lovell v. Griffen, supra; Plummer v. City of Columbus, 414 U.S. 2, 3 (1973); Gooding v. Wilson, 405 U.S. 518 (1972).

Distribution here is, of course, within the protective boundaries of the First Amendment. And so is the right of U.S. authors and publishers to import those

foreign-made copies for the purpose of making such distributions. Lamont v. Postmaster General, supra. [detention of mail from "communist" countries]; United States v. Thirty Seven Photographs, 402 U.S. 363 (1971) [procedure for enforcing Tariff Act prohibitions against obscene literature and photographs]; United States v. A Motion Picture Film Entitled "I Am Curious Yellow", 404 F.2d 196 (2nd Cir. 1968) [Tariff Act prohibition of importation of allegedly obscene film for distribution here]; see also, United States v. 18 Packages of Magazines, 238 F. Supp. 846, 847 (N.D. Cal. 1964).

It should be emphasized that the Manufacturing Clause not only restrains authors' and publishers' rights of distribution, it also restrains the constitutional right of the public to receive foreign-made copies of U.S. authors' works. The Supreme Court has declared:

"[T]he First Amendment goes beyond the protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw." First National Bank of Boston v. Bellotti, 435 U.S. 765 (1977).

The Manufacturing Clause violates that prohibition. See also Martin v. City of Struthers, 319 U.S. 141, 143 (1943); Lamont v. Postmaster General, supra, 381 U.S. at 305, 309.

(B) The First Amendment Prohibits
Congress From Dictating Where
Books Must be Manufactured

In Miami Herald v. Tornillo, 418 U.S. 241 (1974), the Court struck down a Florida access statute, requiring newspapers to print, cost-free, replies of candidates whose reputations had been injured. The Court said:

"Even if a newspaper would not face additional costs to comply with a compulsory access law and would not be forced to forego publication of news or opinion by the inclusion of a reply, the Florida statute fails to clear the barriers of the First Amendment because of its intrusion into the function of editors." (418 U.S. at 258)

The Court stressed that "[t]he choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper . . . constitute the exercise of editorial control and judgment" and that "governmental regulation of this crucial process [cannot] be exercised consistent with the guarantees of a free press as they have evolved to this time."

These First Amendment guarantees protect books as well as newspapers. And just as the guarantees would prevent Congress from dictating to publishers and authors how large a book must be, or what it must contain, or that it must be printed by one process rather than another to provide more work for book printers and workers, so the First Amendment prevents Congress from dictating to publishers and authors

-- of books or newspapers -- where the copies must be manufactured.

(C) Coercion of Authors to Print Here
Or Abandon Their Copyright Violates
The First Amendment

The effect of the Manufacturing Clause is to compel U.S. authors to either manufacture every targeted literary work here, or abandon their copyrights in foreign-made copies which are imported and distributed here. (The third effect, discussed below, is to prevent distribution of their works in this country.) Compulsion to manufacture here is, as we argued above, unconstitutional.

Even if all U.S. and foreign publishers always could afford to manufacture here the copies of U.S. authors' literary works they distribute in this country, the Manufacturing Clause could not be constitutionally justified on the ground that the works it banned from distribution could be made available by printing them here.

"Restraint on expression may not generally be justified by the fact that there may be other times, places or circumstances available for such expression. Southeastern Promotions v. Conrad, 420 U.S. 546, 556 (1975); Spence v. Washington, 418 U.S. 405, 411 n.4 (1974); Schneider v. State, 308 U.S. 147, 163 (1939); Cf. Cox v. New Hampshire, 312 U.S. 569 (1941)" Minarcini v. Strongsville City School District, 541 F.2d 577, 582 (6th Cir. 1976).

Moreover, when a publisher is forced by the Clause to change his editorial decision and manufacture here rather than abroad, the Clause may impose a financial penalty upon

him. For, as demonstrated by the legislative history of the 1982 extension of the Manufacturing Clause, it is sometimes much cheaper for publishers to manufacture abroad than in the United States. House Judiciary Committee Report on the Extension Bill (H.R. Rep. 97-575, Part I, 97th Cong. 2d Sess.; Ways and Means Committee Report on the Bill (Ibid, Part II); Transcript of Ways and Means Committee Hearing on the Bill (Serial 97-56, May 27, 1982); House Debate on the Bill (June 14, 1982, Cong. Rec. H3427-3430); Debate on Motion to Override President's Veto (July 13, 1982, Cong. Rec. H4016-4023, S8099-8106).

The Manufacturing Clause, as did the tax in Grosjean v. American Press Co., Inc., 297 U.S. 233 (1936), has a constitutionally impermissible purpose and effect: "it is a deliberate and calculated device . . . to limit the circulation of information to which the public is entitled in virtue of the constitutional guarantees" and it has the "plain purpose . . . of curtailing the circulation of a selected group" of First Amendment materials. 297 U.S. at 250.

The forced abandonment of copyright is a severe penalty to exact for the exercise of the First Amendment right to import and distribute foreign-made copies. Loss of protection under Section 601(d) means that other publishers may issue competing editions of the work (usually at a lower

price since they do not have to pay royalties), can take advantage of the authorized publisher's promotion, assay the market risks on the basis of his risk-taking, etc. The threatened loss of profit may actually make it impossible for the authorized publisher even to recover the cost of manufacturing abroad, importing and distributing copies . . . and prevent him from doing so. That impediment, of course, is the very purpose of the Clause.

The Clause thus imposes deterrents and penalties that violate the First Amendment by deterring or punishing the exercise of its rights to import or distribute copies. Since copyright is the "engine of free expression" (Harper & Row Co., supra), the Congressional pressure to abandon copyright as the price of importing copies inhibits that freedom of expression in a constitutionally impermissible manner.

POINT III

THE BAN ON IMPORTATION AND
DISTRIBUTION IS OVERLY BROAD

Even if the First Amendment allowed some regulation in this area, and we submit it does not, the Manufacturing Clause would violate the Amendment, for it still would run afoul of the principle applied by the Supreme Court in Louisiana v. N.A.A.C.P., infra; Shelton v. Tucker, infra, and other cases.

In Louisiana v. N.A.A.C.P., 366 U.S. 293 (1961), the Court said:

"We are in an area where, as Shelton v. Tucker, 364 U.S. 479, emphasized, any regulation must be highly selective in order to survive challenge under the First Amendment. As we stated there ' . . . even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.'" (Id. at 296)

Congress ignored this principle. Its purposes could have been "more narrowly achieved." The ban is imposed on all nondramatic literary works in English by United States authors who reside here; it thus includes

-- works that could not be published at all unless printed abroad because the cost of doing so here is too expensive. Even if the author and publisher could demonstrate that fact, the Clause makes no provision for an exception to the ban (other

than the right to import up to 2,000 copied under an import statement);

-- works that were printed here, went out-of-print in U.S. manufactured editions, and could only be distributed here from available copies of an English-language edition published and manufactured in another country;

-- works that an author and publisher could not, or might not want to, find a printer for here because of its unpopular views; and

-- works that the U.S. publisher might have to have printed abroad because they were being co-published with foreign publishers.

The Manufacturing Clause thus is overly-broad because it does not use the narrowest means available to avoid unnecessary restraints of the First Amendment rights of U.S. authors and publishers to distribute their work in foreign-made copies. Although the purpose of the clause is to prevent competition from foreign publishers, it is applied in several types of situations where foreign manufacture would not deprive U.S. printers of work, because the books could only be (or had been) manufactured abroad, and would not be distributed here if domestic printing were required.

Plaintiffs are, of course, entitled to attack the overbreadth of the Clause even if their specific conduct were not protected (and it is). Bates v. State Bar of Arizona, 433 U.S. 350, 380 (1977), and cases cited.

The Department of Labor's report in support of the Manufacturing Clause anticipated loss of printing work

to foreign competition involving mostly the production of works that could claim little or no First Amendment protection. Hearing of the Ways and Means Committee's Subcommittee on Trade, Serial 97-56, pp. 16-17. Howard D. Samuel, President of the Industrial Union Department of the AFL-CIO, emphasized this in his statement at House hearings on the bill to extend the Manufacturing Clause. He said:

"The printing in Southeast Asia by companies using cheap labor, of U.S. telephone directories, retail catalogs such as Sears Roebuck and Montgomery Ward, business forms such as slips, time cards, billing sets, purchase orders and the like, greeting cards . . . advertising materials and miscellaneous printing such as copyrighted congressional campaign literature. For all of these categories, there is not even the pretense of the freedom of authors to publish without the manufacturing clause limitation." Exhibit 1 to Plaintiff's Statement Pursuant to Rule 3(g).

Congress could have drawn the Manufacturing Clause far more narrowly to include only the telephone directories, deposit slips and many other categories of "commercial" works which Mr. Samuel listed. These works, which claim little or no First Amendment protection, accounted for the largest part of the estimated loss of work for U.S. manufacturers. Instead Congress subjected all books, periodicals and newspapers by U.S. resident authors to

the prohibition on importation and distribution -- sweeping under the embargo publications on every subject and topic of possible interest to readers, the total range of expression to which the First Amendment guarantees the uninhibited right of distribution.

During the almost 6 years between enactment of the Clause in October 1976 and its scheduled expiration on July 1, 1982, Congress had available two alternative methods of protecting U.S. book manufacturers and employees against the threat of foreign competition that would not have restricted First Amendment rights of authors and publishers.

First, by virtue of a specific reservation, the Florence Agreement -- to which the United States is a signatory -- does not limit the power of the International Trade Commission -- ITC -- to recommend the imposition of duties, quotas, orderly market agreements, et cetera, with respect to books and periodicals.

A second alternative to the manufacturing clause in the copyright law was proposed by representatives of the printers in the course of our hearings. This proposal was a tax incentive credit for books manufactured in the United States along the lines of the general investment credit which now applies to the producers of motion pictures made in the United States.

Testimony of Assistant Register of Copyrights Anthony P. Harrison, before Ways and Means Committee (May 27, 1982),

Serial 97-56 at 22-23. Neither Congress nor the book manufacturing industry did anything to invoke either of these methods.

The Manufacturing Clause is clearly unconstitutional under Shelton v. Tucker and Louisiana v. N.A.A.C.P. Obviously, the court cannot rewrite the Manufacturing Clause to confine it to material not protected by the First Amendment, and therefore must declare it unconstitutional. Blount v. Rizzi, 400 U.S. 410, 419 (1971) ("it is for Congress, not this Court, to rewrite the statute"). See also Teitel v. Cusack, 390 U.S.D. 139 (1968); Freedman v. Maryland, 380 U.S. 51 (1965).

POINT IV

THE MANUFACTURING CLAUSE
 VIOLATES THE FIRST AMENDMENT
 BECAUSE IT DISCRIMINATES AGAINST
 ONE CLASS OF FIRST AMENDMENT
 WORKS AND IS UNDERINCLUSIVE

The Manufacturing Clause is at once overly broad and underinclusive. That is a frequent failing of statutes that impose restraints on freedom of expression, as the Supreme Court has pointed out. For example, in Carey v. Brown, supra, the Court cited "the apparent overinclusiveness and underinclusiveness of the statute's restriction." 447 U.S. at 465. And in First National Bank of Boston v. Bellotti, supra, the Court, holding the First Amendment was violated, noted that "the provisions of the statute . . . are both under- and over-inclusive." 435 U.S. at 792.

Sections 601 and 603(a) and (c) do not apply to and do not prohibit the importation or public distribution in the U.S. of foreign-made copies of

-- copyrighted literary works in English by foreign nationals domiciled abroad;

-- copyrighted literary works in foreign languages by U.S. authors or foreign authors, whether domiciled here or abroad;

-- public domain literary works in English or foreign languages by U.S. or foreign authors domiciled here or abroad;

-- literary works in English written by U.S. and foreign individuals domiciled here who created those works as employees-for-hire of foreign corporations;

-- copyrighted literary works in which English-language text comprises less 50% of the work; and

-- films, records, paintings, statues, plays, operas, photographs and all other classes of copyrighted non-literary works, in English or foreign languages, by U.S. or foreign authors, whether domiciled here or abroad.

Copies of these works can be manufactured in any country and imported and distributed in the United States without any restriction on quantity and without any denial or restriction of the remedies and protections provided by the Copyright Act. Sections 601 and 603(a) and (c) are unconstitutional because their restrictions on foreign-made copies of works protected by the First Amendment are limited to copyrighted literary works in English by U.S. authors domiciled here.

This discrimination against one class of First Amendment works, and the under-inclusiveness of the Manufacturing Clause, violate the First Amendment. Minneapolis Star and Tribune Company v. Minnesota Commissioner of Revenue, 460 U.S. 575 (1983); Erznoznik v. City of Jacksonville, 422 U.S. 205 (1975); Police Department of Chicago v. Mosley, 408 U.S. 92, 94, 98 (1972); Cox v. Louisiana, 379 U.S. 559, 581 (1965).

In Erznoznick v. City of Jacksonville, supra, the Supreme Court held that an ordinance which banned from drive-in theaters films with nude scenes was unconstitutional under the First Amendment. Mr. Justice Powell said that by "singling out" movies containing scenes of nudity "the legislative classification is strikingly under-inclusive" and that

"'Above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter or its content.' Police Department of Chicago v. Mosley, 408 U.S. at 95. Thus, 'under the Equal Protection Clause, not to mention the First Amendment itself,' id., at 96, even a traffic regulation cannot discriminate on the basis of content unless there are clear reasons for the distinctions." (citations omitted)

In Police Department of Chicago v. Mosley, supra, the Court ruled unconstitutional an ordinance which prohibited picketing next to schools but exempted labor picketing from the restraint. The Court held that under the Equal Protection Clause which, in this area, "is closely intertwined with the First Amendment interest," a statute could not grant a privileged position to one form of expression that was not allowed to other forms of expression. It emphasized: "There is an equality of status in the field of ideas," 408 U.S. at 95-96.

The Manufacturing Clause singles out one class of copyrighted works, on the basis of content, and subjects only them to a restraint on the First Amendment rights of distribution and importation of foreign-made copies.

For the reasons discussed above, without more, the Clause is unconstitutional and invalid. The Clause violates the First Amendment because its restraints on literary works are not drawn narrowly enough to satisfy the principles of Shelton v. Tucker, supra, and other authorities we cite; and because its discrimination against literary works in English by U.S. authors and its gross "[in]equality in the field of ideas" violates the principles of Erznoznick and Mosley, supra.

It matters not that many publishers might be able to afford to manufacture in the United States copies of literary works covered by the clause. As the Court noted in Tornillo, a right-of-reply statute is unconstitutional "even if a newspaper would face no additional costs" in complying and "would not be forced to forego publication of news or opinion. . ." 418 U.S. at 258.

Also, it matters not that Congress did not intend to restrain the distribution of First Amendment materials when it enacted a statute that applies one of the most powerful weapons of censorship -- the power to dictate to authors and publisher where copies of their works must be

produced. As the Supreme Court said in Minneapolis Star and Tribune Company v. Minnesota Commissioner of Revenue, supra:

"We need not and do not impugn the motives of the Minnesota legislature in passing the ink and paper tax. Illicit legislative intent is not the sine qua non of a violation of the First Amendment. See NAACP v. Button, 371 U.S., at 439; NAACP v. Alabama, 357 U.S. 449, 461 (1958); Lovell v. Griffin, 303 U.S. 444, 451 (1938). We have long recognized that even regulations aimed at proper governmental concerns can restrict unduly the exercise of rights protected by the First Amendment. E.g., Schneider v. State, 303 U.S. 147 (1939)." 103 S.Ct. at 1376.

POINT V

THE MANUFACTURING CLAUSE DOES NOT
SERVE A FIRST AMENDMENT COMPELLING
INTEREST

The Supreme Court has repeatedly held that, even where some restraint on the exercise of First Amendment rights is justified, the challenged restraint is subject to "exact-ing scrutiny" and can only be justified by a showing, which the government bears the burden of making, (i) that the restraint serves "governmental interests" of "vital im-portance"; and (ii) that the government has employed "means closely drawn to avoid unnecessary abridgement" Elrod v. Burns, 427 U.S. 347, 362-3 (1976), and cases cited therein; First National Bank of Boston v. Bellotti, 435 U.S. 765. (1978).

It is unquestioned that the interest served by the Manufacturing Clause is the protection of U.S. book manu-facturers against the competition of foreign manufacturers. See District Court opinion, at 15-16 (A44-45). The legis-lative history makes clear that Congress intended the extension of the Clause to serve that interest -- the protection of private businesses engaged in printing and binding books.

But the protection of a private business or industry from competition is not a compelling governmental interest

that justifies the restriction of other peoples' First Amendment rights. In Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, supra, a Virginia statute prohibited pharmacists from advertising prices; one of the primary state interests urged by the Board was the protection of professional pharmacists against competition from price-cutting competitors. In holding the statute a violation of the First Amendment, the Court said the State could not achieve that purpose by prohibiting speech, the advertising of prices; "it may subsidize or protect them from competition in other ways. Cf. Parker v. Brown, 317 U.S. 341 (1943). But it may not do so" by suppressing the flow of information contained in the advertisements. 425 U.S. at 770.

Again, in NAACP v. Clairborne Hardware Co., 458 U.S. 886 (1982), the Supreme Court held that the state's interest in protecting merchants against the damages caused by a boycott did not justify the enforcement of state remedies. While recognizing the state's power to regulate economic activities, the Court held this could not justify the prohibition of peaceful speech protected by the First Amendment. 458 U.S. at 913, 914.

POINT VI

THE MANUFACTURING CLAUSE VIOLATES
THE FIFTH AMENDMENT

In Shapiro v. Thompson, 394 U.S. 618, 642 (1969), the Supreme Court held that the Fifth Amendment forbids "discrimination that is 'so unjustifiable as to be violative of due process.'" Schneider v. Rusk, 377 U.S. 163, 168. (1964); Bolling v. Sharpe, 347 U.S. 497 (1954)." In Schneider, due process was violated by a statutory discrimination between two classes of citizens, native-born and naturalized. In Shapiro, it was violated by discrimination between new and old residents.

Under these Fifth Amendment cases, and under Erznozik and Mosley, supra, the discrimination of the Clause, discussed in Point IV, deprives U.S. authors and publishers of due process and equal protection under the Fifth Amendment.

There is a further dimension to that unconstitutional discrimination. Congress purported to find authority for the Manufacturing Clause in the Patent and Copyright Clause of the Constitution (Art. I, Sec. 8, Cl. 8), which authorizes it to grant to "authors and inventors the exclusive rights to their respective writings and discoveries."

In granting exclusive rights to inventors, Congress has never imposed, under the Patent Act, a Manufacturing Clause restriction which prohibits the importation or distribution of machinery, equipment and other devices "protected" under the U.S. Patent Act. This, despite the well known fact that in the last three decades millions of U.S. manufacturing jobs have been exported to other countries, whose manufacturers produce and export to this country enormous quantities of products that are protected by U.S. patents.

Congress has chosen not to impose a patent/manufacturing clause to protect U.S. manufacturers against foreign competition and possibly save the jobs of hundreds of thousands, perhaps millions, of American workers. Yet acting under the same constitutional grant of authority, Congress imposes a "recognized burden" on American authors to foreclose estimated, prospective job losses in the printing industry (disputed by other government agencies), which are miniscule compared to those that actually have occurred in industries producing products protected by U.S. Patents. We submit that such a gross discrimination against one subclass of individuals whose protection is founded on the same constitutional clause violates the Fifth Amendment.

CONCLUSION

It is respectfully submitted that the Order granting Appellees' motion for summary judgment should be reversed; Appellants' cross-motion for summary judgment should be granted; and an order should be entered (i) declaring that sections 601 and 603(a) and (c) (to the extent they enforce section 601) violate the First Amendment and the Fifth Amendment and are invalid; and (ii) enjoining Appellees from enforcing the provisions of those sections.

Respectfully submitted,

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ADDENDUMText of the Manufacturing Clause
71 U.S.C. §§ 601, 603**§601. Manufacture, importation, and public distribution of certain copies**

(a) Prior to July 1, 1982, and except as provided by subsection (b), the importation into or public distribution in the United States of copies of a work consisting preponderantly of nondramatic literary material that is in the English language and is protected under this title is prohibited unless the portions consisting of such material have been manufactured in the United States or Canada.

(b) The provisions of subsection (a) do not apply--

(1) where, on the date when importation is sought or public distribution in the United States is made, the author of any substantial part of such material is neither a national nor a domiciliary of the United States or, if such author is a national of the United States, he or she has been domiciled outside the United States for a continuous period of at least one year immediately preceding that date; in the case of a work made for hire, the exemption provided by this clause does not apply unless a substantial part of the work was prepared for an employer or other person who is not a national or domiciliary of the United States or a domestic corporation or enterprise;

(2) where the United States Customs Service is presented with an import statement issued under the seal of the Copyright Office, in which case a total of no more than two thousand copies of any one such work shall be allowed entry; the import statement shall be issued upon request to the copyright owner or to a person designated by such owner at the time of registration for the work under section 408 or at any time thereafter;

(3) where importation is sought under the authority or for the use, other than in schools, of the Government of the United States or of any State or political subdivision of a State;

(4) where importation, for use and not for sale is sought--

(A) by any person with respect to no more than one copy of any work at any one time;

(B) by any person arriving from outside the United States, with respect to copies forming part of such person's personal baggage; or

(C) by an organization operated for scholarly, educational, or religious purposes and not for private gain, with respect to copies intended to form a part of its library;

(5) where the copies are reproduced in raised characters for the use of the blind; or

(6) where, in addition to copies imported under clauses (3) and (4) of this subsection, no more than two thousand copies of any one such work, which have not been manufactured in the United States or Canada, are publicly distributed in the United States; or

(7) where, on the date when importation is sought or public distribution in the United States is made--

(A) the author of any substantial part of such material is an individual and receives compensation for the transfer or license of the right to distribute the work in the United States; and

(B) the first publication of the work has previously taken place outside the United States under a transfer or license granted by such author to a transferee or licensee who was not a national or domiciliary of the United States or a domestic corporation or enterprise; and

(C) there has been no publication of an authorized edition of the work of which the copies were manufactured in the United States; and

(D) the copies were reproduced under a transfer or license granted by such author or by the transferee or licensee of the right of first publication as mentioned in subclause (B), and the transferee or the licensee of the right of reproduction was not a national or domiciliary of the United States or a domestic corporation or enterprise.

(c) The requirement of this section that copies be manufactured in the United States or Canada is satisfied if--

(1) in the case where the copies are printed directly from type that has been set, or directly from plates made from such type, the setting of the type and the making of the plates have been performed in the United States or Canada; or

(2) in the case where the making of plates by a lithographic or photoengraving process is a final or intermediate step preceding the printing of the copies, the making of the plates has been performed in the United States or Canada; and

(3) in any case, the printing or other final process of producing multiple copies and any binding of the copies have been performed in the United States or Canada.

(d) Importation or public distribution of copies in violation of this section does not invalidate protection for a work under this title. However, in any civil action or criminal proceeding for infringement of the exclusive rights to reproduce and distribute copies of the work, the infringer has a complete defense with respect to all of the non-dramatic literary material comprised in the work and any other parts of the work in which the exclusive rights to reproduce and distribute copies are owned by the same person who owns such exclusive rights in the nondramatic literary material, if the infringer proves--

(1) that copies of the work have been imported into or publicly distributed in the United States in violation of this section by or with the authority of the owner of such exclusive rights; and

(2) that the infringing copies were manufactured in the United States or Canada in accordance with the provisions of subsection (c); and

(3) that the infringement was commenced before the effective date of registration for an authorized edition of the work, the copies of which have been manufactured in the United States or Canada in accordance with the provisions of subsection (c).

(e) In any action for infringement of the exclusive rights to reproduce and distribute copies of a work containing material required by this section to be manufactured in the United States or Canada, the copyright owner shall set forth in the complaint the names of the persons or organizations who performed the processes specified by subsection (c) with respect to that material, and the places where those processes were performed.

\$603. Importation prohibitions: Enforcement and disposition of excluded articles

(a) The Secretary of the Treasury and the United States Postal Service shall separately or jointly make regulations for the enforcement of the provisions of this title prohibiting importation.

* * * * *

(c) Articles imported in violation of the importation prohibitions of this title are subject to seizure and forfeiture in the same manner as property imported in violation of the customs revenue laws. Forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case may be; however, the articles may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury that the importer had no reasonable grounds for believing that his or her acts constituted a violation of law.

WRITTEN QUESTIONS FOR IRWIN KARP
SUBMITTED BY SENATOR MATHIAS

1. U.S. authors and publishers are the principal victims of copyright piracy in foreign countries. S. 1822 aims to give those countries an incentive to stamp out piracy, by restricting their access to U.S. printing business if they do not provide adequate copyright protection. Why then do you urge Congress to reject this tool for promoting greater respect for your copyrights?
2. Haven't you supported legislation to condition GSP and other trade benefits on improvements in copyright protection? How is S. 1822 distinguishable?
3. In your view, copyright protection is generally not important to the kinds of works that are now exempt from the manufacturing clause but that would be covered under S. 1822 -- for example, advertising material. If so, do you regard S. 1822, with its expanded coverage, as any more objectionable than S. 1938, which maintains the status quo? Or are they equally undesirable from your point of view?

RESPONSES OF IRWIN KARP

The Authors League of America, Inc.

224 WEST 44TH STREET • NEW YORK, N.Y. 10036 • TELEPHONE (212) 361-9100

March 18, 1936

Stevan Metalitz, Esq.
Subcommittee on Patents,
Copyright & Trademarks
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Dear Steve:

Please excuse my delay in responding to the 3 questions sent to me after I testified on January 21st on the Manufacturing Clause extension bills. Here are my answers.

Question 1: asks why authors oppose S.1822 since it "aims to give other countries incentive to stamp out piracy, by restricting their access to U.S. printing business if they do not provide adequate copyright protection?"

Answer: Most countries now denied "access to U.S. printing business" by the manufacturing clause already give U.S. authors adequate copyright protection, indeed often a higher degree of protection than this country does. Enactment of a permanent manufacturing clause is not necessary to "improve" the protection of their laws; on the contrary it is likely to provoke some of these nations, through anger and frustration, to enact import embargos of their own, thus damaging not only U.S. authors but also U.S. printers and their employees.

Question 2: asks whether the Authors League has supported legislation that conditions GSP and other trade benefits on improvements in copyright protection.

Answer: The League has not taken a position on such legislation. S.1822 is very distinguishable; it restricts authors' constitutional rights and copyrights in order to protect U.S. printers against foreign competition. The legislation referred to in the question does not do that.

Question 3: asks if S. 1822, which extends the restrictions of the manufacturing clause to works not presently subject to it, is more objectionable than S. 1938 which maintains the status quo.

Answer: S. 1822 would extend the clause to several categories of works, not now subject to it, for which copyright is very important, as testimony of other witnesses pointed out. To that extent it is more objectionable than S. 1938. It also imposes further penalties and restrictions on authors, which were discussed in our testimony. To that extent it is more objectionable than S. 1938. Neither bill is constitutional, and each will injure U.S. authors and will not protect the jobs of U.S. printing workers.

I am enclosing a copy of the questions, which are summarized above, for reference.

With kindest regards.

Sincerely yours,

Irwin

Irwin Karp

Senator MATHIAS. Thank you, Mr. Karp.
Mr. Secretary.

STATEMENT OF TOWNSEND HOOPES

Mr. HOOPES. Good morning, sir, and thank you. The Association of American Publishers is appearing in opposition to both of the bills before you, the Thurmond bill and the Metzenbaum bill.

We believe the manufacturing clause should terminate as now scheduled on July 1, 1986. In the first place, such a provision does not belong in the copyright law; it is a trade issue.

To the best of our knowledge, no other country in the world has a law which holds the creative rights of its own authors and publishers hostage to the happenstance of the place of manufacture.

Linking such a provision with copyright rights inevitably means that any attempt to protect American printers throws the legal and economic rights of authors and publishers to the wolves.

Now comes the Thurmond bill, which would make authors and publishers hostage not merely to printing competition for books, but also to printing competition for calendars and bread wrappers. That seems to us a patently unfair and genuinely absurd situation.

So we are opposed in principle to the continued inclusion of the manufacturing clause in the copyright law, and we are also opposed to its inclusion in any U.S. statute.

Our second reason for opposition is that it serves no legitimate need. American printers are not an endangered species. Their modern printing plants and their efficiency assure them a lion's share of all printing done for the \$9 billion American book publishing industry and, no doubt, a lion's share of the vast volume of printing done for products not protected by the manufacturing clause.

When the printing industry was beating the drums for an extension in 1982, they drew upon the much-discussed Labor Depart-

ment study and its estimated loss of upward of 172,000 jobs and perhaps 367,000 job opportunities.

I believe that report did play a significant role in the Congressional vote to extend the clause 4 years ago, and to override Mr. Reagan's veto. The report was, in fact, wildly inaccurate.

The then Register of Copyrights, David Ladd, pointed out to Congressman Kastenmeier, at the time, in a carefully reasoned and documented letter that I wish to include for the record, that the study included a vast number of jobs that are not remotely protected by the manufacturing clause; for example, jobs involved in the printing of business forms, calendars, and bread wrappers.

Some of these jobs may well have been threatened by the 1982 recession, but no relief was, in fact, obtainable by extending the manufacturing clause. Nevertheless, it was surprising that much of the testimony by the printers this morning argued again that the manufacturing clause is somehow a shield against types of competition which are not protected in any way by the manufacturing clause.

The Labor study also made a second major mistake. It drew no distinction between the publishing and printing industries, but lumped the two together for purposes of measuring impact on employment. But 70 percent of the jobs in the so-called book industry are publishing jobs, not printing jobs, and publishing companies can only be hurt, not helped, by extension of the manufacturing clause.

So in our view, Mr. Chairman, the Labor Department study is quite invalid and we do hope that an update will correct its gross inaccuracies, and give the Congress a better basis for judging the employment impact this time around.

We find a more accurate analysis of how termination of the clause would impact printing jobs in the International Trade Commission report of 1983. There, aside from estimating the loss of job opportunities at somewhere between 1,400 and 6,800, the Commission said the long-term effect of termination would be generally insignificant. I am including the executive summary of the ITC report for the record.

I pass over a third point relating to the Thurmond bill, in particular. I think Mr. Stewart will give you the details of how the Thurmond bill is likely to eliminate, to make financially impossible, the publication of many illustrated children's books and art books.

Our fourth reason for opposing extension is related to our country's role as a leader in the international struggle to strengthen copyright protection everywhere in the world, and especially in the less developed countries where there is such widespread violation of copyrights, patents, and trademarks—indeed rampant piracy of all American intellectual property.

Retention of the manufacturing clause would hardly set a good example here, and would make it much more difficult for the U.S. Government to persuade Third World governments to pursue a more mature and responsible course. The manufacturing clause is no protection against book piracy in the LDC's.

Finally, Mr. Chairman, we are concerned about the impact on the overall U.S. trade position. The manufacturing clause was cited

in 1982 as a violation of GATT, by the GATT Council. The U.S. Government accepted the finding and agreed that we had reneged on our promise to terminate the clause in 1982.

The matter is not merely an international embarrassment. As has been said here this morning, any further extension will invite various forms of retaliation and these may not be confined at all to printed products. They could include, for example, strictures on the import into many countries of our agricultural products.

For all of these reasons, Mr. Chairman, we oppose the enactment of the Thurmond and the Metzenbaum bills.

Thank you, sir.

[Mr. Hoopes' submissions for the record follow:]

PREPARED STATEMENT OF TOWNSEND HOOPES

SUMMARY

The Association of American Publishers appears in opposition to S. 1822 and 1938, proposals to retain and expand domestic manufacturing requirements in the copyright law. The "manufacturing clause," section 601 of the Copyright Act, should terminate as scheduled on July 1, 1986.

The bills are unnecessary. As clearly shown, for example, in an expert study conducted by the International Trade Commission, no significant displacement of U.S. production of printed matter will result from termination of the manufacturing clause. Moreover, effective and traditional relief from any meaningful disruption that might (however unlikely) occur is already available to the book production industry under the trade laws. Domestic manufacturing requirements, if pertinent, are matters of trade regulation and have no legitimate place in the copyright laws.

The bills injure American authors, illustrators, and publishers by depriving them of full enjoyment of their copyrights, by forcing complete abandonment of copyright protection, and by inducing unfair competition from foreign sources. Moreover, they injure all American workers and companies by encouraging the imposition of barriers to the export of American goods and services of all kinds. Additionally, the bills will impair any publication of some types of books, and expansion of the current clause will deprive this country's parents, children, educators, and librarians of quality juvenile books. These proposals will also substantially harm this country's efforts to eliminate unfair trade practices abroad and its standing in the world copyright and trade communities.

* * *

I am Townsend Hoopes, President of the Association of American Publishers. We are appearing today in opposition to Senate bills 1822 and 1938, measures that would permanently retain domestic book manufacturing requirements as part of the copyright law and, in the case of S. 1822, vastly expand the coverage of this provision. The publishing industry believes that the "manufacturing clause," section 601 of the Copyright Act, should terminate as now scheduled on July 1, 1986. It does not belong in the copyright law, hinders the free flow of information, and deprives our citizens of effective enjoyment of both their copyrights, accorded by Congress under the Constitution, and the full breadth of First Amendment guarantees.

Importantly, the bills serve no meaningful purpose. In its official "Study of the Economic Effects of Terminating the Manufacturing Clause of the Copyright Law" publicly released in 1983, the International Trade Commission concluded, after extensive, expert study, that: "displacement of U.S. production of printed matter by imports as a result of the termination of the manufacturing clause would result in the loss of 1,400 to 6,850 employment opportunities in the U.S. economy;" and "the long-term effect of expiration of the manufacturing clause on conditions of competition between U.S. and foreign firms engaged in printing and related activities would be generally insignificant." Moreover, effective relief from any disruption that might, however unlikely, occur is already available to the book production industry under existing trade laws (a point I will return to shortly).

The effects of maintaining (and, in the case of S. 1822, expanding) the domestic manufacturing requirements will not be protection of this country's printing industry. Quite to the contrary, the results of these bills, whatever their intent, will unquestionably include forced abandonment of copyright by American authors and publishers; an inability to provide some types of books to the American public (indeed, the expansion of the clause in S. 1822 to include all "printed material that is in the English language" can only result in depriving this country's parents, children, educators and librarians of quality juvenile works, and in injuring our authors and illustrators of such works and other pictorial books); unfair competition by foreign authors, illustrators, and publishers with American creators; and increased consumer prices.

In the international arena, the impact will be no less devastating. Retention of the manufacturing clause will be a clear affront to our partners within the GATT framework. The United States having already been held in violation of the GATT by reason of the manufacturing clause, its extension will severely undercut our country's ability to eliminate unfair trade

practices abroad. In its communication to the Department of State on November 13, 1985, the Delegation of the Commission of European Communities noted: "In view of the importance which the U.S. Government is known to attach to the smooth functioning of the GATT dispute settlement procedure, the Commission must assume that the U.S. Government will do everything in its power to ensure that the [GATT] panel recommendations are implemented." This is surely a reasonable expectation of our country, one that proclaims the honor of obligations incurred under international treaties, understandings and arrangements and promotion of an open trading system. Retention will also be viewed as a continuation of years of failed promises to our trading partners and allies, and as wholly inconsistent with this country's claims to leadership in the world copyright community.

To complete the cycle, the reverberations of these effects will be revisited on domestic interests in this country. Export of our products and services will be subject to retaliatory trade measures imposed abroad in compensation for retention of the manufacturing clause in violation of the GATT.^{1/} Further, the bills will establish a clear precedent that is inconsistent with attempts to reduce foreign trade barriers for all American goods, and will provide justification for imposition of domestic manufacture and content restrictions in foreign laws of all kinds. In all these cases the injured parties will be U.S. agricultural workers, electronics workers and companies, consumer goods creators and others throughout the U.S. economy. And the bills will provide inducement for diminished protection of U.S. intellectual properties abroad.

These consequences are in most cases clear and direct, and in some, perhaps, more subtle. But, in all cases they are

^{1/}It must be noted that the GATT Council's adoption of the Panel Report resolving the complaint of the European Communities against the manufacturing clause is compelling precedent for a finding of violations against other GATT members. Thus, trade retaliation against the United States can be imposed by a broad spectrum of countries. Whether invoked by the EC or other GATT members, retaliation will not be limited to American publishing products.

certain, they are wholly repugnant to fair treatment of our authors and publishers, they are antithetical to our national interests -- and they are simply unnecessary.

The U.S. printing and book manufacturing industry does not need the protectionist legislation embodied in the bills before you. These industries currently enjoy the confidence and trust of book publishers and will continue to do so. For reasons certainly more fundamental than the manufacturing clause, United States book manufacturers and printers have attained levels of technological development, quality, capacity, and capability that are generally unsurpassed. As clearly shown, for example, by the International Trade Commission Study I referred to earlier, there is simply no reasonable basis to believe that the doomsday forecasts of the book production industry are accurate, well based, or otherwise viable.^{2/}

I will not represent to this committee that no book now subject to section 601 will be manufactured abroad after July 1, 1986, if the clause expires. But I will not concede that the presence or absence of the manufacturing clause will be a significant determinant. Publishers must have the opportunity to make a fully informed business judgment, freed from unprincipled encumbrance on their copyrights and the rights of their authors; and in those cases where particular books will simply not be published if the alternative is domestic manufacture and abandonment of copyright, the only loser will be the American public. (As noted earlier, expansion of the clause in S. 1822 will particularly injure this country's juvenile readers and our authors and illustrators of children's and other books.)

Manufacturing interests have repeatedly made reference to

^{2/} The underlying reasons for retained domestic manufacture have been fully explained, explored, tested, and confirmed in prior legislative testimony and government studies. I will not go into them in detail in this prepared statement. They include the competitive need for short manufacturing schedules, quick reprints and hence local production; quality of production and quality control; climatic conditions affecting production; transportation costs; the advantages of direct shipment to customer; and others. On a real-world basis, wage differentials and currency fluctuations have also been considered.

the "Australian Experience" -- instances where the Australian government subsidized local publishers in order to discourage printing and binding of their books in Hong Kong and Singapore. (Actually, the Government of Australia gave publishers a financial subsidy that represented the difference between what publishers would have paid to produce books in Hong Kong or Singapore and what they actually had to pay to Australian printers and binders.) However, that situation is not at all analogous. For example, the requirements of Australian publishers are very small and are geared to their native market, thus enabling them to use small presses and binderies available in Hong Kong and Singapore. Similarly, the maturity and technical capabilities available domestically in Australia are not comparable to those of U.S. manufacturers. Also, Hong Kong and Singapore are very close to Australia, thus enabling reasonable scheduling. As confirmed by prior U.S. Government studies, the "Australian experience" is precisely and only that: a localized situation attributable to unique factors. It is not pertinent to the question before this committee.

The copyrights of American authors and publishers should not be held hostage to foreign practices and trade issues; our authors, publishers, reading and consuming public, manufacturing and other companies and workers, and national standing should not be forced to prematurely pay an unnecessary price for uncertain and unlikely future developments. If, notwithstanding our own and every reasonable expectation, the book production industry cannot thrive in the face of foreign competition by reason of its own quality of service and product, appropriate remedies already exist under the trade laws. Contrary to the repeated assertions of book manufacturing interests, traditional trade relief will be available to that industry in the event of demonstrable need. Although it has been repeatedly alleged that the Florence Agreement makes it impossible for printers and manufacturers to secure protection from foreign competition, other than under the copyright laws, this is simply wrong. The United States ratified

the Florence Agreement subject to a protocol of reservation.

The text of the reservation is, in part, as follows:

If, as a result of the obligations incurred by a contracting State under this Agreement, any product covered by this Agreement is being imported into the territory of a contracting State in such relatively increased quantities and under such conditions as to cause or threaten serious injury to the domestic industry in that territory producing like or directly competitive products, the contracting State, under the conditions provided for by paragraph 2 above, shall be free, in respect of such product and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend, in whole or in part, any obligation under this Agreement with respect to such product.

This reservation can be implemented under existing trade laws. This is not to say that the AAP believes that the circumstances envisaged by the protocol will result from elimination of the manufacturing clause; nor do we in any way suggest that AAP favors tariffs on books, or any departure from the basic provisions of the Florence Agreement. However, we do believe the foregoing clearly demonstrates that the copyright law is a totally inappropriate vehicle for resolving the concerns of book manufacturers and printers over foreign competition. There is simply no basis in history, experience, law, logic, or higher principle for the notion that full protection of authors' and publishers' rights in the fruits of their labors may fall victim to the happenstance of place of manufacture.

I would conclude my remarks with several comments directed specifically at S. 1822. The AAP, together with other segments of the American copyright community, has been at the forefront of attempts to improve protection of American intellectual property abroad, and to diminish the imposition of trade barriers on international commerce. We believe that Chairman Thurmond's bill evidences concerns and sympathies with these issues that we welcome and appreciate; but we must conclude that the mechanism to meet these ends in S. 1822 is ineffective and counterproductive. It continues to punish American authors and publishers by depriving them of full enjoyment of their copyrights; it will particularly impair the production of quality

juvenile and art books; its certification mechanism is of a nature that precludes efficient business planning, creating uncertainties that will preclude lower cost, or any, publication of books as surely as if the possibility of certification were not present at all; and its design to induce negotiation of trade barriers is misplaced -- the American trade barrier at issue has been held in violation of our international obligations, and its maintenance and expansion can only result in retaliation, not reduction, in kind. We fully agree with Senator Thurmond and the sponsors of S. 1822 that trade considerations are important; but we must respectfully urge that they be resolved in the appropriate forum under existing mechanisms, not in our copyright law, and most certainly not by depriving this country's authors, illustrators, publishers and readers of their copyrights and their access to American scholarship, ideas and talent.

Since the early 1950s, the manufacturing requirements of the copyright laws have been the subject of searching analyses in panels, hearings and studies conducted for and before Congress, the International Trade Commission, the Copyright Office and international fora. No aspect of the issue has escaped microscopic examination. The results continue to demonstrate that the magnitude of threatened job loss put forward by proponents of the clause are inaccurate and grossly misstated, that the clause is not appropriately a copyright matter, and that it continues to be an international embarrassment that will impair important national interests. On July 1, 1986, the remaining vestiges of the anachronistic, inexplicable, and indefensible manufacturing requirements imposed on the copyright law should be finally laid to rest.

Thank you for the opportunity to express these views.

The Register

December 17, 1981



The Honorable
Robert W. Kastenmeier
U.S. House of Representatives
Room 2232 Rayburn House Office Building
Washington, DC 20510

Dear Rep. Kastenmeier:

LIBRARY
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Department
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This supplements the Copyright Office's testimony concerning H.R. 3940. Most, but not all, of this supplementary information concerns the rather marked disparity between the results, in terms of economic effects, of the estimates of the Congressional Research Service and the Office of Foreign Economic Research of the Department of Labor. Although the latter report was not received into the record of your hearing, its conclusions drew attention there and, I note, in the Senate when S. 1880 was introduced. There are four points which must be considered by anyone evaluating the Labor Report.

1. The present manufacturing clause does not protect the number of job opportunities remotely as large as the Labor Report suggests, because the clause does not cover the range of printed material assumed by the Labor Report. Only nondramatic literary works consisting preponderantly of English-language material are covered. As construed by the courts, "preponderantly" means that the surface area of textual material must be measured against the surface area of illustrative and other nontextual material; only if the former outweighs the latter is the work within the clause's scope. (Stonehill Communications, Inc. v. Martuge, 512 F. Supp. 349 (S.D.N.Y. 1981)). Thus, estimates of lost job opportunities with respect to the printing of blankbooks, business forms, heavily illustrated catalogues, greeting cards and the like are not credible if based on the expiration of the clause, because such works, and the jobs of their manufacturers, are in no way affected by the clause. The Copyright Office report, which emphasized the book publishing industry, did not do so in an attempt to minimize the impact of expiration. Its emphasis was based on the historic fact that virtually all of the debates, court cases, and Customs interventions have occurred with respect to books. Prior to the Labor Report, no one, including Mr. Nordberg, the economist hired by the Book Manufacturers' Institute, had ever suggested that such sectors of the printing industry as newspapers, commercial printing, "miscellaneous publishing," and "miscellaneous printing services" would in any way be affected by the expiration of the clause. I do not understand on what basis they were included in the Labor Report; and its conclusions should not be accepted unless their inclusion is explained.

Particularly troublesome is the inclusion of commercial printing. The Department of Labor adopts an Office of Management and Budget definition of commercial printing. As can be seen in the attachment, taken from the OMB's Standard Industrial Classification Manual, the output of the sector denominated commercial printing consists almost entirely of works not protected by the clause: bags, bread wrappers, calendars, cards, sheet music, post cards, bank notes, maps, and the like. Printers concerned about losing work in the manufacture of non-literary works, such as these, have nothing to fear from the clause's expiration because they are not now protected. While no one seems to know how many jobs in the commercial printing sector are clause-related, that number is far smaller than indicated in the Labor Report.

2. The Labor Report fails to distinguish between printing and publishing, but at least 70% of jobs in the book industry are in publishing rather than printing, and thus not protected by the manufacturing clause. As was made clear at the hearing, these are, for all practical purposes, separate industries. Another division of the Labor Department, the Bureau of Labor Statistics, distinguishes in its reports between book publishing and book printing, but does not do so with respect to other printing/publishing sectors. No one has suggested that publishers are going to lose jobs if the clause expires; thus one may reasonably — indeed, must — question the propriety of lumping printers and publishers together when predicting job losses. Interestingly enough, with respect to the book industry, 71.4% of those employed in August of 1981 were in publishing rather than printing.* To the extent that the Labor Report has combined these sectors, one should probably discount its estimates by a like percentage, since only printers will even arguably be affected. Based on the limited scope of the clause and the differences between printing and publishing, the Copyright Office believes that fair analysis of Table 2 of the Labor Report (p. 5) should keep the following factors in mind:

<u>Sector</u>	<u>Description</u>	<u>Comment</u>
26.01	Newspapers	Although covered by the clause, they are too time-sensitive to go abroad even at the 2% high range prediction.
26.02	Periodicals	They are far too time-sensitive to permit ocean transport from the Pacific Basin of anything like 15% of present output.
26.03	Book Printing & Publishing	70% of these jobs are publishing and thus not threatened. Of the remaining 30%, not all of the output is protected by the clause. (Illustrated works, works of foreign authors, etc.).
26.04	Miscellaneous Publishing	Undefined in the Labor Report but, to the extent that this concerns <u>publishing</u> jobs, none should be lost through expiration.
26.05	Commercial Printing	No one, including the supporters of the clause, has ever before suggested that commercial printing is at issue here. There is no evidence concerning the extent to which commercial printers' output is copyrighted. Only copyrighted literary works are covered by the clause; thus the data here must be discounted to whatever extent copyright is not claimed <u>or</u> the works are not literary.
26.06	Manifold business forms, blank-books, and binders	Few job opportunities are threatened here since the works tend to fall into two categories unaffected by the clause: uncopyrightable works and works in which no copyright is claimed.
26.07	Greeting card Publishing	The publishing-printing dichotomy is at issue here, as is the quantitative distinction between literary and other works. Few if any jobs should be threatened, since most greeting cards contain vastly more illustrative than textual materials.

* Employment & Earnings, October 1981, Bureau of Labor Statistics at 72.

Sector	Description	Comment
26.08	Miscellaneous Printing Services	Also undefined in the Labor Report. It seems unlikely that its products are literary works whose manufacturers are protected by the clause, since such works appear in some of the previous categories.

Of all of the sectors listed in Table 2, then, only 26.03 (Book printing and publishing) has even the potential for being seriously affected by expiration, and even there the predictions should be reduced by at least 70% to account for the vast majority of that sector's employment being in publishing than printing.

3. The sources for the quantitative estimates in the Labor Report are open to question because its predictions concerning output decreases are explained not by resort to objective data but only upon subjective "informed judgments of analysts in industry, labor, and government." With respect to the book industry, it is clear that the 35-40% range of output loss is taken directly and unquestioningly from the report commissioned by the Book Manufacturers' Institute and prepared by E. Wayne Nordberg to buttress their arguments in support of extension of the clause. There is no reason why the United States government should adopt the numbers of an interested party without independent examination. With respect to other sectors, where the report predicts large job losses, no explanation at all is given for the predicted output losses. In addition, the Labor Report treats the manufacturing clause as having the effect of a 33% import duty on books because that is the subsidy paid by Australia to its book manufacturers. For the reasons articulated by CRS in its report and described in ours, the "Australian experience" is hardly relevant to the future of the U.S. industries; and, even if it were, it is unclear how the clause, which prevents certain business from taking place, can be compared to a duty which increases certain transaction costs. Although the Labor Report cautions repeatedly against over-reliance on its data, "pro-clause" advocates appear to rely on its numeric conclusions and ignore such caveats. The importance of the caveats may be seen by examining two of them: At page 12, the Labor Report states:

The lack of certain basic data, such as the percent of printed material in each sector that is actually copyrighted . . . prevented more accurate, point estimates.

Thus it is conceded that the percentage of copyrighted work is unknown. Since a critical issue in analyzing the effect of the expiration of the manufacturing clause is not merely whether a work is copyrighted, but also whether it is literary, the data become, of course, even more unreliable.

Then, at page 13, one reads:

The accuracy of the section one estimates rests on the assumptions . . . [which] are the informed judgments of analysts in industry, labor, and government. To the extent that these judgments are incorrect, the resulting estimates will be biased.

As stated above, these judgments do appear at best unexplained, if not clearly incorrect, thus meaning at least that an inference of bias would not be unjustified.

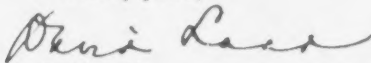
4. The Labor Department apparently assumes, incorrectly, that the clause's expiration will leave these jobs without alternative forms of protection. As I believe the hearing made clear, this is not at all the case. Expiration, combined with the protocol to the Florence Agreement, will place American printers on an equal footing with all other American workers. Provable threatened harm will entitle them to relief in the same forum to which most industries now go: the International Trade Commission.

The position of the Copyright Office is that the number of jobs and job opportunities potentially directly exposed by expiration, far from being in the hundreds of thousands, is in the range of 5,000 to 9,000 found by CRS. This is not to say that anywhere near this many jobs or opportunities would be lost however: growth in exports and domestic demand and the availability of conventional trade relief from the International Trade Commission should serve to prevent any significant losses whatsoever.

Since the hearing we have received information concerning possible retaliation against the United States if the clause is retained. According to persons involved in trade negotiations, the Common Market countries and Switzerland have at various times refrained from seeking trade relief against the United States on the belief that the clause would expire in 1982. As recently as last month the matter was raised at meetings in Washington in which the E.E.C. apparently manifested an intention to pursue relief under the General Agreement on Tariffs and Trade if the clause were to be retained. While the scope and effect of any retaliatory measures can not easily be predicted, it is fair to assume that they will be adverse to U.S. interests. In addition, the British Embassy sent a letter to the State Department on December 9, 1981 (copy attached) in which it "note[s] with regret" the terms of H.R. 3940.

Thank you very much for the opportunity to amplify the record.

Sincerely yours,



David Ladd
Register of Copyrights

Enclosures:

1. OEB Standard Industrial Classification Manual showing the output of all printing and publishing sectors
2. Letter from the British Embassy

WRITTEN QUESTIONS FOR TOWNSEND HOOPES

SUBMITTED BY SENATOR MATHIAS

1. U.S. authors and publishers are the principal victims of copyright piracy in foreign countries. S. 1822 aims to give those countries an incentive to stamp out piracy, by restricting their access to U.S. printing business if they do not provide adequate copyright protection. Why then do you urge Congress to reject this tool for promoting greater respect for your copyrights?

2. Haven't you supported legislation to condition GSP and other trade benefits on improvements in copyright protection? How is S. 1822 distinguishable?

3. S. 1822 exempts works that come under the Nairobi Protocol governing exchanges on cultural and educational materials. What if anything does this do to mollify your concerns about the extension of the clause?

4. What factors determine where a book is manufactured? Is it just the cost of labor or are other factors involved such as paper costs, transportation, location convenience? What effect do you think the value of the dollar is having on decisions to print overseas? If the value of the dollar were to decline with respect of other currencies would publishers, particularly of art and children's books, publish here?

5. You may overstate your case when you say the manufacturing clause is not sanctioned by history. We have lived with it, in one form or another, for nearly a century. Aren't the dire consequences that you predict applicable mostly to the enactment of the legislation like S. 1822, which expands the manufacturing clause? By contrast, wouldn't a bill like S. 1938, which perpetuates the existing clause, simply lock in the status quo, in which a relatively limited class of books may not be printed abroad? What's wrong with the status quo? Hasn't the publishing industry done pretty well under it for the last ten years -- and hasn't the reading public done pretty well too?

6. The printers suggest that the current manufacturing clause is difficult for the Customs Service to enforce, because of ambiguities in the meaning of the statutory phrase "a work consisting preponderantly of nondramatic literary material that is in the English language." Do you agree that this is a problem? Can you give any examples of difficulties you have encountered at Customs?

RESPONSES OF TOWNSEND HOOPES



Association of American Publishers, Inc.

2005 Massachusetts Avenue, N.W.
Washington, D.C. 20036
Telephone 202-732-3335

February 26, 1986

The Honorable Charles McC. Mathias, Jr.
Chairman
Subcommittee on Patents, Copyrights and Trademarks
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Mathias:

This is in reply to your letter of January 27 to Townsend Hoopes and the six questions addressed to the Association of American Publishers.

The answers stated below are numbered to correspond to your questions.

- 1-2. Senate bill 1822 purports to encourage copyright protection in foreign countries by penalizing American authors and publishers and depriving them of full copyright protection in this country. American publishers are forced to choose between copyright protection and the ability to have their books manufactured on the basis of rational economic decisions. This is no choice at all. American authors are deprived of the opportunity to enjoy copyright for their works in this country in some cases, or of the very opportunity for publication in others. For the reasons given in our prepared and oral testimony, S. 1822 injures this country's authors, publishers, and reading public. The foregoing constitute very real differences between the various legislative measures conditioning trade benefits for foreign countries on adequate copyright protection in those countries, and S. 1822. Additionally, the result of both S. 1822 and S. 1938 is likely to be retaliatory action of varying types which will prejudice, not improve, the interests of all American producers and consumers.
3. The exemption contained in S. 1822 for works that come under the Nairobi Protocol is of very little consequence. This exemption applies to very limited categories of special materials (publications consigned to certain libraries, certain United Nations publications, official government publications of the exporting country, "books adopted or recommended as textbooks in higher educational establishments and imported by such establishments," and "free" publications intended to promote tourism abroad) and would have no bearing on the books which are our major concern.
4. Many factors come into play in determining where a book will be manufactured. Among the factors prompting a publisher to decide on U.S. manufacture are: 1) Quality Control - the ability of editors and production experts to visit their printing plants to approve color and/or registration of the actual press run; 2) Climate Conditions - different climate conditions and material standards in foreign countries can result in the warping of hard cover books after delivery to the U.S.; 3) Transportation Costs - delivery to and pick up from the dock, freight forwarding charges, ocean freight, insurance, and similar factors add considerably to the cost of manufacturing abroad; 4) Direct Shipment - many publishers ship their books directly from U.S. binderies to customers at the uniform special rate fourth class, not possible when manufacturing abroad; 5) Reprinting - because publishing is

an inexact science and a book's popularity cannot really be predicted, it is often necessary to obtain quick reprints. With new technological improvements, it is possible to obtain reprints in 5 to 7 days when the book is produced in the U.S. Reprinting abroad takes months.

On the other hand, other factors may lead a U.S. publisher to manufacture abroad in particular cases. As publishers Andrew Stewart and Marc Cheshire pointed out in testimony before the Subcommittee January 21, the kind of specialized printing capability their firms need for the four-color, lavishly illustrated books and children's picture books they publish are the special province of some foreign printers. As Mr. Stewart told the Subcommittee, a typical book published by his firm would cost three times as much for color separating and one and a half to three times as much for printing in the United States than in Japan, Italy or Switzerland. American printers are more committed to the production of books in greater quantities than his firm produces, using different equipment and techniques. The high quality sheet-fed printing required for his publications that is done in the U.S. is principally for commercial printing, such as corporate annual reports.

5. There can be no question that the "history" of the manufacturing clause has been one of unprincipled legislation and national embarrassment in the world copyright community. Perpetuating the status quo in this instance is, we believe, dangerous. Our trading partners are justifiably disturbed by proposals to extend the manufacturing clause in any form. Its elimination has been the subject of repeated diplomatic assurances; its continuation has been adjudged a violation of the GATT. At least apparent retaliatory action has been forestalled since the clause is due to expire on July 1, 1986. If we now extend the manufacturing clause, magnify the GATT violation, and repudiate earlier assurances, our national prestige and influence in world copyright and trading communities would be substantially prejudiced, and other countries would be free - indeed encouraged - to impose retaliatory measures of their own that will injure all segments of this country's economy.

In addition, while it is impossible to specifically prove the negative effect of the manufacturing clause because it is impossible to list the books that were not published because of it, it is safe to say that for as long as there has been a manufacturing clause, publishers have had to make choices, and many of these choices involved not publishing a book by an American author, or publishing it by abandoning copyright, or by seeking a foreign author instead of an American author in order to be free to make rational business decisions unencumbered by such a restrictive clause. Retention of the manufacturing clause will perpetuate these undesirable and harmful choices.

6. We wholly disagree with the printers' contention that the current language in the manufacturing clause is ambiguous and difficult for the Customs Service to interpret and enforce. There is case law (*Stonehill v. Martuge*) establishing clear precedent and spelling out the necessary legal distinctions in a fashion that permits predictable and objective business planning and administration. We have not encountered problems with the Customs Service regarding interpretation of the phrase "a work consisting preponderantly of nondramatic literary material that is in the English language."

American publishers are grateful for your continuing interest and concern. We stand ready to assist you and the Subcommittee in any way we can.

Sincerely,

Carol A. Risher
Carol A. Risher
Director of Copyright

Senator MATHIAS. Thank you, Mr. Secretary.

STATEMENT OF MARC CHESHIRE

Mr. CHESHIRE. Mr. Chairman, my name is Marc Cheshire; I am the editorial director of the Books for Young Readers Division of Henry Holt and Company, of New York City. I appear before you today to voice my strong opposition to Senate bill 1822 which you are currently considering. If enacted, this bill will have serious adverse effects on the creation and publication of children's picture books in the United States.

It will force the American public and libraries to pay higher prices for picture books. It will discriminate against American authors and illustrators, and by destroying the delicate price structure for certain types of picture books, it will limit the diversity of books that can be published.

Each year, millions of children across the country discover the joys of reading. Usually, their first exposure to reading is through a beautifully illustrated picture book. It might be a dog-eared copy of "Mother Goose" that has been passed on from one generation to the next; it might be a copy of "The Cat in the Hat" borrowed from a public library, or it might be a paperback edition of "Where the Wild Things Are," purchased at the local bookstore.

Through picture books like these, children learn to read, to dream, to laugh, to explore. It would be ironic if, during the time of great concern about the decline of reading in the United States, the committee responsible for overseeing copyright matters were to pass a law that would severely hurt the strength and diversity of the American children's book industry. But by denying copyright protection to picture books printed outside of the United States, Senate bill 1822 would do just that.

If S. 1822 is enacted, it will certainly fulfill its true purpose—namely, to protect the American printing industry from foreign competition—because very few, if any, American publishers would be foolish enough to print abroad and forgo U.S. copyright protection.

During the last 5 or 6 years, the cost of printing full-color picture books in the United States has risen dramatically. As a result, many publishers, including Holt, have tried to hold down costs by manufacturing certain books abroad rather than raising retail prices to consumers. Publishers have done this despite the fact that there are certain risks and problems associated with printing out of the country.

The reason that publishers are willing to accept these risks and problems is that picture books are very price-sensitive. The average retail price for hard-cover books is between \$10.95 and \$12.95, and if the price were to rise beyond that range, sales of most picture books would drop to the point where they would be unprofitable.

Hardest hit would be books by new authors and illustrators. Publishing such books would become an even riskier proposition than it is now, so many of them simply would not be published in the first place. In this way, S. 1822 discriminates against the hundreds of talented authors and illustrators who create these books, the very people the copyright laws are designed to protect.

I am not suggesting that all picture books would be eliminated. There would be certain books, primarily those created by well-known authors and illustrators, that would probably sell well despite retail price increases. But these picture books would become needlessly overpriced and American consumers and American libraries would be forced to pay the cost.

Publishers would also suffer under S. 1822 since they would become a captive market for a small group of specialized printers. As costs and retail prices rise and sales drop, the already small profit margins of trade publishers would shrink.

But things would not be quite as bad for American publishers as they would seem to be at first glance. The reason for this is simple. Publishers would still be able to get U.S. copyright protection for imported picture books created by foreign authors and illustrators.

If the cost of picture books by domestic authors and illustrators becomes prohibitive, publishers have a ready source of supply to replace the books that would no longer be profitable. Because of this loophole, S. 1822 is doubly discriminatory toward American authors and illustrators.

I believe that the problems I have just described were not considered by the supporters of this bill. Although I have restricted my testimony to children's books, everything I have stated also applies equally to the many other types of books that are currently manufactured abroad.

Neither S. 1822 or S. 1938 are good for American authors, illustrators, photographers, publishers, or consumers. If the supporters of these bills want to ensure the strength and diversity of the American publishing industry, I respectfully request that they reconsider their support and allow the manufacturing clause to expire as scheduled in July.

Thank you.

[Responses of Mr. Cheshire to written questions submitted by Senator Mathias follow:]

WRITTEN QUESTIONS FOR MARC CHESHIRE
SUBMITTED BY SENATOR MATHIAS

1. U.S. authors and publishers are the principal victims of copyright piracy in foreign countries. S. 1822 aims to give those countries an incentive to stamp out piracy, by restricting their access to U.S. printing business if they do not provide adequate copyright protection. Why then do you urge Congress to reject this tool for promoting greater respect for your copyrights?
2. Haven't you supported legislation to condition GSP and other trade benefits on improvements in copyright protection? How is S. 1822 distinguishable?
3. What factors determine where a book is manufactured? Is it just the cost of labor or are other factors involved such as paper costs, transportation, location convenience? What effect do you think the value of the dollar is having on decisions to print overseas? If the value of the dollar were to decline with respect of other currencies would publishers, particularly of art and children's books, publish here?
4. Prior to 1978 weren't all children's and art books covered by the manufacturing clause and as such manufactured here in the United States? If so, how would S. 1822 inhibit the production of art or children's books? Can't we just go back to the situation as it was prior to 1978? Is charging a little more for these books a reasonable price to pay if it will save the printing industry?

RESPONSES OF MARC CHESHIRE

Cable HENRYHOLT NEWYORK

Telex 424632 HHC

HENRY HOLT AND COMPANY, INC.

521 Fifth Avenue, New York, NY 10175 Tel (212) 599-7600

Responses of Marc Cheshire, Editorial Director, Books for Young Readers
Henry Holt and Company

1. Piracy affects other parts of the industry (school and college textbook publishers, medical and professional publishers, etc.) much more than juvenile and art book publishers. I am not aware of any cases of piracy of any Holt juvenile books.

The cumulative conditions of S.1822 are also much broader than simple protection of copyright. These conditions create the possibility that many countries which do protect copyright would still not be exempt.

This provision was included in S.1822 simply to confuse the issue. The true purpose of S.1822 is to prevent American publishers from printing any books outside the U.S.

2. I am not familiar enough with these matters to comment.

3. The primary factor in determining where a book is manufactured is its total cost (ie: paper, printing, binding, labor and shipping). The second most important factor is time. In most cases the possibility of saving money by printing overseas will outweigh the extra time it might take. Careful scheduling can eliminate this factor completely.

The strength of the dollar is having a significant effect on these decisions, but even if the dollar were to decline to a very low level foreign supplies would still have two advantages:

1. Lower labor costs
2. Greater competition*

* This requires some explanation, and it is a very important point. Low volume (ie: 5,000 to 15,000 copies) full-color, sheet-fed work is not attractive to most American printers. There are very few companies that even have the expertise to print these books. But on a worldwide scale the situation is very different. If a publisher can use the printers in Italy, Spain, Switzerland, Japan, Hong Kong, Singapore or Great Britain, then the number of potential suppliers is much greater and they must compete with each other for the job. The competition among these foreign printers is another major reason why their prices are lower.

4. Prior to 1978 many full-color books were manufactured outside the U.S. in violation of the clause and were never registered for copyright.

In the children's book field, only a small proportion of picture books were full color due to the high cost of this type of printing. Most picture books were black-and-white or two color.

Since 1978 there has been a total reversal in this situation and now very few picture books are not full color.

There has also been a dramatic change in the types of picture books published since 1978. Prior to that time only mass market juvenile publishers could produce board books and inexpensive, small format picturebooks. The reason for this was that their print runs were 35,000 copies and up. After the change in 1978, many other publishers were able to do these same books at lower quantities by printing overseas, thus increasing the quantity, quality and diversity of children's books.

If S.1822 is passed, the following things will happen:

1. Retail prices will rise dramatically.
2. As a result, sales of most types of books will fall. Many books will become unprofitable and publishers will stop publishing them.
3. The number of foreign picture books imported into the U.S. will increase dramatically to replace the books U.S. publishers can no longer afford to do.
4. Since the foreign books will be printed in the same countries U.S. publishers can no longer use, their retail prices will be lower than books by American authors.
5. U.S. publishers will produce fewer picture books at higher prices. They will not be able to take risks on new authors and unusual subjects.

American children enjoy books created by the best, most diverse children's book industry in the world. Why should American consumers and libraries be forced to pay higher prices to protect the American printing industry from competition? Why should American artists, writers and photographers be forced to suffer loss of copyright over what is really a trade issue? Why should American publishers be prevented from taking advantage of worldwide competition in the printing industry?

STATEMENT OF REBECCA RATLIFF

Ms. RATLIFF. Mr. Chairman, my name is Rebecca Ratliff and I am head children's librarian at the Bethesda Public Library in Montgomery County, MD. I appear today in opposition to S. 1822, a bill which would greatly expand the manufacturing clause of the Copyright Act, a clause which is scheduled to expire July 1, 1986.

This bill would hamper American publishers' ability to utilize the most economical approach to producing quality children's books at reasonable prices. Publishers who wish to continue publishing picture books for children will be faced with a Hobson's choice: print abroad and ask authors and illustrators to forgo their right to copyright protection, or print domestically at a cost which will price the book out of reach of young families and many libraries.

A book unsold is a book unread, and a book unsold to a library is a book unread by generations of children. As a children's librarian, I am greatly concerned that the cost of children's books, especially picture books, will increase, placing additional burdens on library budgets which are already severely strained.

We are familiar with the wisdom of the saying, give a hungry man a fish to eat and you enslave him; teach him to fish and you set him free. When a child learns to read, he has learned to fish.

As a nation and as individuals, whether we be librarians, publishers or elected officials, we are faced with seeking solutions to the problems of illiteracy in both children and adults. Let us not take an action which will reduce the diversity and availability of one of our chief weapons in that battle—books for very young children.

Picture books are a child's introduction to the wonderful world of books and reading. In a recent Gallup study, 59 percent of mothers who read to their preschoolers said they preferred books with mostly pictures.

In Montgomery County, the Department of Public Libraries has determined that library service to publicly funded day care centers is its No. 1 children's priority. Day care teachers use public libraries heavily, checking out 25 to 30 books at a time, and they do this every 3 to 6 weeks the year around. Nursery and preschool teachers do the same.

A modest estimate of the number of picture books they use in the Bethesda area is 600 volumes every 3 to 6 weeks.

In addition to volume, we need variety. Children use picture books from infancy to age 5 or 6. Beginning picture books will have all pictures, or mostly pictures with text for parents to read.

Next come picture books with beginning and expanding vocabulary for children to read to themselves. We need a large volume of these books because once a child begins reading, he gallops through this part of our book collection. It is not unheard of for a delighted new reader to go through four or five books a day.

Children cannot speak here for themselves, but if they could, I believe they would say more picture books, not fewer. To maintain a selection of these picture books, we must constantly repurchase the classics, as well as have the newest books for our children.

Because of heavy use, our picture books wear out quickly and our replacement costs are high. I spend between 60 and 75 percent of my total replacement budget on picture books.

Every year, we have a new crop of beginning readers, many of whom, even in affluent Montgomery County, come from homes where books are not a part of their everyday life. The public library is their first, and perhaps their only access to the gifts of fun and fantasy, knowledge and wonder that books possess.

A significant rise in the price of children's books can only result in closing some of the doors we are now opening. Library budgets are not endlessly elastic. There are many fixed expenses which we cannot control, and costs are rising while Federal, State, and local funding dollars for library services are diminishing.

In many communities, it is the book budget which is caught and squeezed. We ask you not to take any action which would put future pressure on the ability of children's librarians to maintain a full, rich collection of books for young readers.

We know that publishers are aware of and sensitive to the need to keep children's books affordable not only for the strained budgets of libraries, but also for parents who wish to share the joy of reading with their children.

If publishers choose, on occasion, to print and bind books abroad in an effort to maintain reasonable prices, should we punish them by denying them copyright protection?

As a concerned citizen, I am pleased that Congress is interested in maintaining the vitality of our domestic industry, including the printing and binding industries, against unfair foreign competition.

I would hope that some of the other avenues of relief will be relied on and not the Copyright Act.

Thank you for the opportunity to express my views.

[Responses of Rebecca Ratliff to written questions submitted by Senator Mathias follow:]



Montgomery County Government

February 19, 1986

The Honorable Charles McC. Mathias, Jr.
United States Senate
Washington, D.C. 20510

Sir:

Thank you for writing to me about S. 1822 and S. 1938 and for giving me further opportunity to explore questions about their effect on providing books for children.

Answers to your questions are attached.

I would also like to express appreciation for your attentive hearing of all sides on this question on January 21.

Very truly yours,

Rebecca Ratliff

Ms. Rebecca Ratliff
Head Children's Librarian
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Department of Public Libraries

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61-200 341

RESPONSES OF REBECCA RATLIFF
TO WRITTEN QUESTIONS SUBMITTED BY SENATOR MATHIAS

What effect will rising prices have on acquisitions?

It will necessarily cut them back. Picture books are our highest priority in children's book selection and acquisition. (The population of ages 0-5 is the fastest growing at this date.) 50% of the children's materials budget is targeted for this area. The higher the price, the fewer books we can buy.

The numbers of children in child care (family day care homes and child care centers) increases by 50 per year in Montgomery County. Groups check out books regularly to be used by multiple small hands rather than for the use of just one child. Intensive use by many children (daily use, not by any means careless handling) is much harder on books than circulation to a single family.

Picture books now retailing at \$12-15 are used with young children during the early years when language development is so crucial. More investment in these early years is much cheaper in the long run than attacking adult literacy much later. The public libraries all over the United States are the only public institution that provides materials for loan for very young children.

Can you just use up existing stock? How fast do books wear out from use? In a busy library existing stock is decreasing regularly as books need to be withdrawn for poor condition. The most popular, usually classics in children's literature, go first, and within three years, without a replacement schedule that allows annual replenishment, the collection would be decimated.

One example that was documented follows. Of 12 Curious George books (a very popular series), 4 were literally consumed (lovingly handled to extinction) at the end of two years and the remainder downgraded from excellent condition to poor (and still in circulation.)

A look at statistics helps to document the wear and tear on children's books. On one day in March, 1984, 69,482 picture books were out in circulation. Total circulation for 84 was 2,353,281 (Cog Metro Wash. statistics) in the Montgomery County Library system alone.

Senator MATHIAS. Thank you very much.

Let me start with a question which is suggested by some of your comments.

Mr. STEWART. Senator, one more speaker.

Senator MATHIAS. Oh, I am sorry. You see, I am so anxious to get into this.

Mr. STEWART. I am anxious to, too. [Laughter.]

STATEMENT OF ANDREW STEWART

Mr. STEWART. My name is Andrew Stewart. I am the president of Stewart, Tabori & Chang, which is a publisher in New York City. We are 5 years old. We employ 25 people in our publishing business and we publish the works of American authors and American photographers and illustrators from all over the country.

Our type of publishing could not have existed before the new copyright law, which permits as an exception to the manufacturing

clause the importation of illustrated books from abroad, and we will not exist if the bill, S. 1822, is passed.

I am sorry, sir. I am not reading a statement. I am talking to you and I am terribly distracted if you do not hear me, and I am terribly concerned as well that Senators Thurmond and Leahy are not here because I know that they have misunderstood a fundamental thing about publishing. And if they understood it, they would realize that at least as to illustrated publishing, what they are doing is destroying American publishing in favor of foreign publishing.

Senator MATHIAS. I know that they are unhappy that they have been called away to other duties, but I can assure you that they have left eyes and ears behind them, so that your comments will be faithfully reported to them.

Mr. STEWART. Thank you, sir.

Since the 1976 law went into effect and finely produced, illustrated books could be printed abroad, imported into this country, written by American authors and copyrighted in this country, a new industry has flourished in this country. My company is a participant in that industry, but there are many others.

We publish books that could never have been published before, like this book on American churches by Roger Kennedy, who is the director of the Smithsonian Museum of American History; like this book on undersea life which is by a Massachusetts professor of marine sciences; like this book by my wife which is on American cooking; like this book "Entering Space" by an astronaut, Joe Allen.

This book, "Entering Space," has been published, as many of the others have, in German because we have exported the rights to this book, and in French, in British, in Canadian, and Japanese editions. Here is another, the Japanese edition of our book "Computer Images."

We are bringing money into this country because we are exporting the rights to these books, and these books could not be published if S. 1822 were passed, and could not have been published and were not published before the new exception to the manufacturing clause that came into effect with the new copyright law.

What we are talking about doing is eliminating the creation of books by American authors and American photographers and going back to what existed 6 and 8 years ago where this all belonged to the Europeans. This all belonged to the English, to the English packagers, to the English publishers, and we simply dutifully imported their books and sold them here because we could not make our own books here.

Now, there were some exceptions: books like Jansen's "History of Art," the most important art history book published anywhere in the world, written by an American author, 2 million copies sold in this country, uncopyrighted, never copyrighted, not protected, copied in other parts of the world without compensation.

There are other exceptions—mass-market illustrated books. These are types of books which can be printed effectively in this country, types of quality-illustrated books, but not the type I am talking about. The type I am talking about, the gentleman from Donnelley here could not print.

We would propose that he print books of this kind and he would offer us prices that are two times and three times the costs abroad. Here is a Sierra Club guide to national parks of the United States, printed in Japan. It costs \$2.60 a copy to print in Japan. It would cost \$6 to print in the United States. These guides would be unpublishable.

They would be, if published, \$35 a copy for a \$14.95 book—an impossibility, an economic impossibility. Unlike anybody else here, I am fighting for the life of my publishing house and for the industry that I participate in.

I am not addressing most of the issues here, but I am addressing Senate bill S. 1822 because that bill, by eliminating the exception for illustrated books, destroys the type of publishing which I do and will eliminate the possibility of publishing American authors and American photographers and American illustrators in favor of foreign ones.

That will happen; it will definitely happen. It existed 8 years ago and it will exist again next year. Not only will new books not be publishable here, but we will not be able to reprint the existing books, the books that we have invested our dollars and our lives in over the past several years while the exception to the manufacturing clause was in effect.

There were so many things said today that I have comments to make on; it is difficult for me to restrain myself, but a couple of them were that it was not perceived that American jobs or American publishing could be threatened by this bill, S. 1822.

I promise you that American jobs will be lost—not only jobs lost, but American expression, American writing, American photography will not be published in this country, if Senate bill 1822 is passed, and will therefore also not be published abroad and the expression of American ideas will not appear abroad in this form.

Thank you.

[Mr. Stewart's submissions for the record follow:]

PREPARED STATEMENT OF ANDREW STEWART

Re: The Manufacturing Clause Of The Copyright Law, Senate Bill 1822, Introduced By Senator Thurmond, As It Affects The Publishing Of Fine Illustrated Books In The United States.

SUMMARY: THE EFFECT OF SENATE BILL 1822, IF ENACTED, WOULD NOT ENCOURAGE AND SUPPORT AMERICAN INDUSTRY IN ITS COMPETITION WITH FOREIGN INDUSTRY, BUT THE EXACT OPPOSITE. IT WOULD SEVERELY LIMIT PUBLICATION OF FINE ILLUSTRATED AND PHOTOGRAPHIC BOOKS BY AMERICAN PUBLISHERS, AUTHORS, PHOTOGRAPHERS AND ARTISTS, AND WOULD FAVOR FOREIGN PUBLISHERS, AUTHORS, PHOTOGRAPHERS AND ARTISTS IN THE AMERICAN MARKET, AND EXPORT MARKETS.

I am president of Stewart, Tabori & Chang. We are publishers of photographic books and art books 90% of which are on American subjects and are written, photographed or illustrated by American authors, photographers and artists. Our company competes in this publishing against a number of other American publishers that also publish illustrated books created by American authors and artists, and against a great many foreign and some American publishers that publish similar books written, photographed or illustrated principally by foreigners.

The color separating and printing costs for high quality photographic and illustrated books, printed in quantities from 3,000 to approximately 25,000 are far higher in the United States than in many countries in Europe and Asia. A typical book published by our company would cost three times as much for color separating and one and a half to three times as much for printing in the United States than Japan, Italy or Switzerland. American printers are more committed to the production of books in much higher quantities, using different equipment and techniques, fast web fed equipment rather than

slower sheet fed presses used for our books. The high quality sheet fed printing done in this country is principally commercial printing, such as corporate annual reports.

A photographic book, such as the Sierra Club Guide to the National Parks of the Pacific Northwest, which we publish at a list price of \$14.95, costs \$2.70 to manufacture abroad. If the color separations and printing were done in the United States, the same book would cost approximately \$6.00 to manufacture. It would require a list price of at least \$29.95 and could, therefore, not be published. The same economic reality would prevent the publication of most of the books which we publish. The only exceptions would be those written and photographed by foreigners, which constitute a small part of our publishing list.

American authors, artists and photographers are generally not willing to have their work published in book form without copyright protection. To allow their work to appear without copyright would threaten the other forms of publication on which most of them depend for their regular income.

For this reason, the great majority of art and illustrated and photographic books which were published in the United States prior to the effectiveness of the 1976 Copyright Act were created by Europeans. Most of the exceptions, those art books written by Americans, including some of the most important art history text books then published in this country, were published without copyright.

Since 1978 a vigorous publishing program of American illustrated subject matter, created and published by Americans, in the form of fine illustrated books, has developed. American food, gardens, fashion, architecture and theatre are all subjects which have been recently frequently published in illustrated book form under the exceptions permitted by the current Manufacturing clause. For example, in 1982 we published a large format illus-

trated book on American Churches, when prior to 1978 one would see many photographic books on European cathedrals but not a single one on the American equivalent. Illustrated books on science for an adult readership were routinely published and exported to this country by Europeans. In the past several years the leadership in this type of publishing has passed to Americans. The proposed legislation, S.1822 would return the franchise to the Europeans.

Fine illustrated books created by American publishers, authors and artists, have also since 1978 been sold by us and other American publishers to foreign publishers and booksellers, with the result that American ideas and subjects, and the work of creative Americans, in illustrated book form, have been seen all over the world. Income in the form of royalties and the proceeds of sale of finished copies has come to American publishers, authors and artists. The enactment of S.1822 would end this.

American books cannot compete in this country or abroad against books of equal or superior manufacturing quality which are produced at half the cost. Even in the absence of the foreign competition, these American books could not be published. To use the example given above, a guide to the National Parks which now sells for \$14.95 would simply not be bought by the American public at \$29.95.

The enactment of S.1822 would not only end most publishing of fine illustrated books created by Americans, it would evidently prevent the continued publication of such books published during the last several years, since even the reprinting of those books would become economically impossible.

S.1822 proposes to permit the manufacture of copyrighted books in countries to be certified as imposing no barriers to trade in printed matter. If such countries exist (I know of none - including the United States), the process of certification and any international

negotiations which may lead to certification would not be completed before the collapse of the smaller and the more specialized publishers in this industry, including Stewart, Tabori & Chang, and the destruction of the new vigor of this creative American publishing.

CONCLUSION: All but a small fraction of high quality American art and photographic books now published in this country would no longer be created or published after the enactment of S.1822. The American printing industry would not be enriched, and the American public would lose the creative work of Americans. The American economy and culture would be deprived of the opportunity to export American creativity. Foreign publishers and authors of books would again, as in the recent past, dominate the business of the creation of fine illustrated books published in this country and the rest of the world.

WRITTEN QUESTIONS FOR ANDREW STEWART

SUBMITTED BY SENATOR MATHIAS

1. U.S. authors and publishers are the principal victims of copyright piracy in foreign countries. S. 1822 aims to give those countries an incentive to stamp out piracy, by restricting their access to U.S. printing business if they do not provide adequate copyright protection. Why then do you urge Congress to reject this tool for promoting greater respect for your copyrights?
2. Haven't you supported legislation to condition GSP and other trade benefits on improvements in copyright protection? How is S. 1822 distinguishable?
3. What factors determine where a book is manufactured? Is it just the cost of labor or are other factors involved such as paper costs, transportation, location convenience? What effect do you think the value of the dollar is having on decisions to print overseas? If the value of the dollar were to decline with respect of other currencies would publishers, particularly of art and children's books, publish here?
4. Prior to 1978 weren't all children's and art books covered by the manufacturing clause and as such manufactured here in the United States? If so, how would S. 1822 inhibit the production of art or children's books? Can't we just go back to the situation as it was prior to 1973? Is charging a little more for these books a reasonable price to pay if it will save the printing industry?

RESPONSES OF ANDREW STEWART

STEWART, TABORI & CHANG, INC.

PUBLISHERS

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February 11, 1986

Senator Charles McC. Mathias, Jr.
 United States Senate
 Committee on the Judiciary
 Washington, DC 20510

Dear Senator Mathias:

This is to reply to your letter of January 27 and the four specific questions you have addressed to me.

I enclose, for your convenience, a xerox copy of the questions as received from you.

My answers, numbered to correspond to the questions, are as follows:

1. As it affects illustrated and photographic books by American authors, photographers and artists, S.1822 will not stamp out piracy but will open the Americans

to being copied in the United States and throughout the world without any legal remedy. Since many illustrated books simply cannot be printed in the United States, the only alternative for an American publisher publishing an American author/artist will be to print his book abroad. The book must then be published without a copyright notice, putting it into the public domain. This is the very reverse of a policy which would help stamp out piracy. It is a policy which, as to this particular type of book, would make piracy legal everywhere.

2. As to Illustrated books, S.1822 will not have any significant effect on the policies of foreign governments regarding copyright protection. The nations whose printing industries might be affected are principally Japan, Italy, and Switzerland. As they already fully respect copyright protection, the threatening of illustrated book publishing and printing of books by American authors/artists cannot serve to improve the copyright protection which they already give. In any case, the language of S.1822 is not sufficiently refined to make it apply only to those jurisdictions which do not grant copyright protection. The language is so broad and uncertain that it would seem to affect nearly all foreign jurisdictions since all of them impose some form or another of restraints on imports.

3. This is a very important question as it applies to quality illustrated books. In broad terms, the choice of the printer reflects a combined evaluation of cost, quality and the dependability of service and delivery. The cost factors are an amalgam of many factors including raw material, especially paper, the cost of specialized labor and craftsman, and the cost of transportation. These factors would generally favor the United States where the paper costs are approximately the same as they are abroad, where the cost of the specialized labor involved in this type of book is not significantly higher than it is in Japan or Switzerland, for example, and where the transportation costs will be far lower since the distance to be covered is far less. Also there is enormous convenience in printing in the United States rather than abroad. Unfortunately, the competitiveness of labor costs and material costs in the United States, and the much lower transportation expenses which would be involved, are completely outweighed by the fact that the American printing industry simply does not have the facilities necessary for the production of books of the kind referred to, nor the interest in producing those books. Thus, if the books were to be printed in this country, in order to acquire the services and the attention necessary, a price which is far higher than what competitive requirements would permit, would have to be paid. In fact, the acquisition of this type of printing from American printers is in competition against the production of commercial merchandise, catalogues, annual reports, and other products which are priced and printed differently from fine illustrated books.

American printers usually do not respond with interest to inquiries for the production of fine illustrated books. They specialize in, and are interested in, other types of printing and production. U.S publishers such as ourselves who would greatly prefer to contract for fine production in the United States, are forced to manufacture their books on other continents where tremendous inconveniences resulting from the distance, the freight costs, and the language problems. Those inconveniences, however, are completely outweighed by the virtual impossibility of printing most of these books in the United States. There is, therefore, no alternative.

Even if the value of the dollar were to decline further

with respect to other currencies, I do not expect this situation to change. There would have to be a virtual collapse of the American dollar to have any impact on the type of printing and publishing which I referred to.

4. Yes, prior to 1978, art and illustrated books were covered by the Manufacturing Clause. The result was that American authors/artists were not published in this form very much. This industry and this type of publishing belonged principally to the Europeans. If we go back to the situation as it existed prior to 1978, we will go back to a situation where we return this area of publishing to European publishers, authors, illustrators and photographers.

Let me reply separately to the last question in paragraph 4: "Is charging a little more for these books a reasonable price to pay if it will save the printing industry?" - this question shows a basic misunderstanding of the problem. With great respect, Senator Mathias, you must understand that this industry is not as obvious and the forces at work in it not as clear as you may think. As it affects illustrated books, the effect of S.1822 would not be "charging a little more for these books." The effect would be that the books would either be published without copyright or would not be published at all if they are written by Americans. Books written, photographed and illustrated by Americans compete against similar books created by foreigners. And the difference in cost and quality of production abroad is not a minor difference, it is an enormous difference. It can be the difference between pricing a book at \$14.95 and pricing it at \$30.00. Even if there were no competition from foreign books, the American public just won't buy \$14.95 books at \$30.00. The fact that there is competition from foreign books makes it all the more clear. In order to compete with all the rest of the books in the world, American publishers, authors, artists and illustrators must publish books which are competitively priced. With very few exceptions, fine illustrated books cannot be competitively priced if they are printed in the United States.

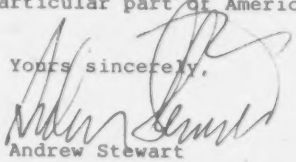
Senator Mathias, the questions addressed to me, especially questions 3. and 4., reveal the misunderstanding of this particular type of publishing which is reflected in the language of S.1822. What is happening here is that the general concern about the protection of the American printing industry is threatening to ruin a particular type of American publishing with no benefit to the American printing industry whatsoever. But because this is a narrow and specialized aspect of the whole issue, it is not understood by the proponents of the bill or by the public in general. There is a very particular problem affecting only this segment of the publishing industry. No doubt it is small compared to the entire American printing industry, but to the hundreds of people who work in these publishing houses and to the hundreds of authors, photographers and illustrators who would be affected, it is an important matter. A very small change in S.1822 which continues the exception for illustrated books, would solve this problem. It would do so without in the slightest way injuring, or indeed affecting, the American printing industry.

Representatives of the American printing industry, including Benjamin Y. Cooper, Senior Vice President Government Affairs of Printing Industries of America, Inc. confirmed to me, after my testimony before your Subcommittee, that the draftsmen of S.1822, with whom he worked, had no knowledge or understanding of this particular issue and it was not their intention to deprive

American publishers of the ability to copyright books by Americans if they were this particular type of book, i.e. fine illustrated books. Only because this is a side-issue, a small corner of the overall question, is this being misunderstood and overlooked. The consequence may be that our Company and this type of American publishing could be closed down.

Please do take the time, and ask your colleagues to do so, to understand this issue. I know that if you understand it, you will make the small correction in S.1822 which is required to save this particular part of American publishing.

Yours sincerely,


Andrew Stewart

Senator MATHIAS. Well, thank you very much. You tantalized me by waving all those books around and not giving me a chance to read them.

Mr. STEWART. I would like to submit them, if I may, as an exhibit to my testimony.

Senator MATHIAS. Let me start out with a question which is not unrelated to your testimony, but is directed to the other side of the equation. How can you make an estimate of job losses given the extraordinarily active technological changes which are overcoming the whole publishing industry at this point?

How can you assign what will be a job loss due to technological changes, economic factors, or other things that may or may not be related to the manufacturing clause? Is it possible?

Mr. KARP. I do not think it is, sir, and I think that the Labor Department report reflects that. In fact, the Labor Department report contains a sentence that practically eliminates its usefulness because the report cautioned that estimates of employment opportunity losses should be interpreted with care.

"The lack of certain basic data, such as the percentage of printed material in each sector that is actually copyrighted, made necessary the approaches pointed here." In other words, they were studying job losses in respect of the manufacturing clause, but the one thing they did not know was how much of the printed material they were studying was either copyrighted or even entitled to copyright.

In addition, I think the other factors—the basic data they say they do not have includes such as the one you have just referred to.

Mr. HOOPES. Sir, it is just a personal view, but it seems to me that the trouble with trying to extend the manufacturing clause in time, and also to broaden it, is that it involved an attempt to anticipate unemployment impact without ever having to prove the case.

It seems to me that, if this problem were placed in the context of a trade issue—if it, for example, were treated under the 1974 Trade Act—then the International Trade Commission would have the ca-

capacity to hear an honest, tangible complaint and could act on the basis of a proven harm.

I would much prefer that to the speculation here of what the employment impact might be based on any one of several studies.

Senator MATHIAS. Several studies have found that printing is less labor intensive than has been represented in some testimony. The International Trade Commission concluded that labor accounts for only about 12 to 19 percent of the cost of producing a book.

Mr. HOOPES. Excuse me, sir. I think that was cents per book, was it not, if I read that correctly?

Senator MATHIAS. In any event, we are talking about less than a major portion of the cost of a book. One thing that everyone seems to agree on is that the industry is becoming less labor intensive as the result of the kind of technological changes that I mentioned a minute ago.

Does this not mean that the advantages that are enjoyed by low-wage countries are likely to decrease as years go on? What does that suggest as to the timing of putting a permanent manufacturing clause into the law?

Mr. HOOPES. Well, I think it follows logically from what you have said that, if there would be any extension at all, it should be quite temporary. In the longer run there is going to be a kind of an equalization of costs as between the United States and other countries, even those of the Pacific Basin.

Senator MATHIAS. Any other thoughts on that?

Mr. KARP. Yes, Senator. I think that one factor that is of interest is that there has been no complaint by the printing industry representatives about the reproduction proof provision, or the interpretation of the manufacturing clause to allow reproduction proofs to be made abroad.

That means the typesetting can be done abroad, and I think the reason there has been no objection is probably twofold. First, a lot of typesetting that is done here is done non-union. Some book manufacturers may very well send typesetting abroad anywhere right now and the technology of typesetting is such that it becomes less and less of a cost factor because it is more and more computer based.

Mr. STEWART. Senator, I would like to point out that as to certain types of books—specifically, the type that we publish, fine-illustrated books and other illustrated books—the labor cost factor seems not to be a factor at all.

Some of these books are printed in Switzerland, where the labor costs are approximately the equivalent of what they are in the United States. Yet, the cost of the books printed in Switzerland is far lower than if we had to print the same book in the United States.

The reason is not the labor cost factor at all, but it is simply that in some countries there is an orientation toward and interest in a certain type of printing which we do not have in the United States.

That type of printing, since it does not exist here, or exists only to a very limited extent, is very expensive here. It is not generally used in the printing of books; it is generally used in the printing of such things as corporate annual reports, which are very expensive

to print, and book publishers cannot compete with corporations buying corporate annual reports.

Senator MATHIAS. So what you are saying is there are specialties that affect the price?

Mr. STEWART. Yes, sir.

Senator MATHIAS. The printers say, and I am quoting, "We are unaware of any instance where a United States author has not been able to publish due to the manufacturing clause."

Mr. STEWART. That is precisely the point I wanted to address. I am aware of many, many, many, many such instances.

Senator MATHIAS. Can you make us aware of them?

Mr. STEWART. It is hard to refer to a book that does not exist. I cannot give you examples of books that do not exist because they do not have titles, but I can tell you that prior to—

Senator MATHIAS. Can you tell us the people, though?

Mr. STEWART. I can tell you this, that none of the books published here are written by authors who were able to publish prior to the new change in the copyright law that took effect in 1978.

I can tell you that if you go back to 1978 and prior and look for photographic books about churches, you will find plenty of them. There are books about French cathedrals and English cathedrals and abbeys and Japanese shrines. You will not find an illustrated book like this on American churches, a color book. You may find some black and white, but no book in color.

For the first time, we were able to publish that. It could not exist, and Roger Kennedy, who is here in this city, can tell you he could not have done that book prior to the new change in the copyright law.

The same thing applies to a subject like marine biology. Photographic books on marine biology were plentiful prior to 1978, but they were not written by Americans. We now dominate this; we export these books. We in America have more to say on these subjects and better to say than the foreigners do and for the first time we can show it.

I do not only mean "say" in words, but I mean "say" in photography. We have the best photographers here and we do the most work and we now export those books. French publishers, English publishers and Japanese publishers come to us for the rights to those books. S. 1822 would reverse that and put us right back to where we were before.

Mr. KARP. It is also difficult, Senator, to track down the number of instances in which an American author's book is out of print in this country, but in print abroad and could have been brought in but for the manufacturing clause. No one keeps statistics on that. That is one of the basic blocks of the clause.

It is also difficult to go into a publisher's mind to find out—I am talking about text publishers as distinguished from Mr. Stewart's publishing, but it is difficult to tell how many times an American publisher has in the past made the decision he and I have both referred to, to use a foreign author, because publishers do not go around admitting that.

Senator MATHIAS. What is your professional opinion on this subject?

Mr. KARP. I think there have been American authors, particularly in the children's book field, who have been denied the opportunity to write a book for a given publisher because of the fact that they were American and the publisher wanted to print the book abroad.

Senator MATHIAS. Would you go so far as to say that because of the manufacturing clause, American publishers would actually seek out foreign authors?

Mr. KARP. Yes; I would say that if the cost projections—it is a catch 22 which is imposed on us. If the cost projections are as extreme as the proponents of S. 1822 say they are, I have no doubt that many American publishers that I and other people in this room know of would not hesitate for a minute to have a garden book written by a Canadian rather than an American if it meant being able to publish it any place in the world they chose.

You can go down an enormous list of types of books that are in a sense commissioned books. It is the publisher who is deciding if he wants a book on this or a book on that, and these publishers will in many instances make that choice. It is profitable and they go where the profit is.

Senator MATHIAS. Mr. Karp, you say you have no doubt about this, and I have the highest personal respect for your professional opinion, but I wonder if you could supplement the record with some examples.

Mr. KARP. That is not easy. I will try, but the point is that the alternatives are being set for you by the proponents. They tell you on the one hand that the cost differential is so great that this will happen; that publishers will print abroad. But then they say U.S. authors will not be hurt.

We say that if the manufacturing clause is extended, then publishers will do what is the natural instinct of someone governed by the bottom line to do—on the other hand, if the cost differential is not great, then I say that publishers will do what they have always been doing. They will print most of their books here.

They will not print art books here and children's books because it is so difficult to do—what is it, four-color separation?

Mr. STEWART. Yes.

Mr. KARP. What Mr. Stewart is talking about is a technical process that is beyond the ken of most American printers. That is why he goes abroad, and that is why, even though labor costs are the same, he goes abroad.

But I am saying that if the rules of the game are those set by the unions and the printers that the cost differential is so great they must be protected, there is just no doubt that large corporate publishers, the big conglomerate publishers who are always trying to squeeze the last dollar of profit, as they are supposed to, are going to take advantage of that.

Senator MATHIAS. What about the work-for-hire doctrine? You and I have discussed the work-for-hire doctrine in other contexts, but what role does that play, because the publisher becomes the copyright holder?

Mr. KARP. First of all, under our Copyright Act, the author initially is the copyright owner unless the author is an employee for hire. It is very easy to create an employment-for-hire situation not

just on paper, but to satisfy the court decisions on the definition of employment for hire. Then the employer is the "author" and owns the copyright.

It is not difficult for an American publisher to contract with a foreign book packager. There are many book packagers in operation here and abroad which provide certain editorial and other services on an independent basis and then contract with the publisher to publish the book.

If an American publisher contracts with a Canadian or British book packager for a book and that packager turns around and contracts with an American author to write it as an employee for hire, the foreign packager is the "author" and owner of the U.S. copyright, and that book can be printed anywhere in the world and imported. But the author has to give up his rights as the owner of the copyright.

Senator MATHIAS. But under the manufacturing clause, in order to get the exemption, would not the publisher have to give up whatever advantages he had under that arrangement if he wants to benefit from the foreign author exemption?

Mr. KARP. No; all publishers who deal with independent contracted authors acquire rights, but not the copyright. The test under the manufacturing clause is the nationality of the "author."

Just as with an American publisher dealing with Graham Greene or Ken Follett, who are British nationals and who do not have a domicile in the United States, the publisher acquires the exclusive publishing rights in this country for the books of either of those authors.

But under the manufacturing clause, because they are foreigners, the American publisher can print those books in Hong Kong, Taiwan, Singapore, or across the border in Mexico. There is nothing under the manufacturing clause which prevents that now or as it would be extended by these bills, and that is one of the great hypocrisies of this situation.

The only people who are going to be hurt by this in the long run, or most hurt, are going to be American authors. It is not going to help the printers that much—far less than they think it is.

I would like to just point out one other thing, Senator. In all of this discussion, we come back to the types of books that are published, read, or written by people represented by the spokesmen at this table—"book" books—and that is a small percentage of the material affected by the manufacturing clause.

Nobody ever steps forward from the magazine or newspaper publishers associations to attack the clause, because they do not ever intend to print abroad. Nobody comes forward from associations representing the American producers of match covers, greeting cards, catalogs, and all of that other material, because they do not care about the manufacturing clause.

If it is cheap enough to go abroad, they will go abroad and print. If they can do it cheaper here, they will do it here, and that is the great preponderance of the job loss estimates that are accounted for in that Labor Department study.

That is another ridiculous aspect of the manufacturing clause. It only penalizes authors and publishers who publish literature, not

those who publish commercial material, which is the great mass of what these people make their living printing.

Most of those small print shops you heard about do not print books, not books published by major American publishers who account for about 90 percent of all the books in this country.

Mr. STEWART. I would like to point out that under the existing manufacturing clause, books by foreign authors could be printed abroad, but they are not. The vast majority of books published by American publishers and written by foreign authors are printed in the United States and will continue to be printed in the United States.

Senator MATHIAS. Are these work-for-hire books?

Mr. STEWART. No. I mean if Ken Follett, an Englishman, licenses the publication of a novel by an American publisher, that American publisher is going to print that novel in the United States because to do otherwise would be economically impossible for reasons quite different from the reasons I was giving before which work the other way.

The American publisher needs that book at hand for quick reprints and the principal costs of printing that book are paper, printing, and binding, not the labor that goes into the actual printing.

The labor is inconsequential in the cost of those books, and those books would be far more expensive and they would not be readily available if they were printed in Singapore. It is unthinkable to print those books in Singapore; they never will be.

Mr. KARP. Senator, most trade books in this country are written by authors who retain their copyrights; they are not employees for hire.

Supplementing what you have just heard: During the Copyright Office hearings in 1981 prior to the Congress consideration of extension, I pointed out that if you examine the list of popular British authors published in this country by American publishers who would be free to print anywhere, a huge majority of those books were printed here for distribution here.

The Copyright Office did a survey which substantiated that, and that is the case today, too. I mean, the honor system works a lot better than the manufacturing clause. Publishers do not go out of this country just to penalize American printers. They only go when, for one reason or another, it is economically necessary and they stay here the rest of the time, which represents the great preponderance of the books printed here.

What we are concerned about is something that the first amendment is concerned about. It is not what happens in the majority of instances; it is what happens on those rare occasions when an author and publisher in this country are denied a choice which economically and constitutionally they should have the right to make—where to print the book.

Now, it is denied not by tariffs, which is not a first amendment issue, but by a flat embargo on going abroad and having copies brought in.

Senator MATHIAS. As I think most of you are aware, this subcommittee has been very sensitive to the problem of book piracy and copyright piracy generally, and sensitive to the fact that American

authors and American publishers seem to be the principal victims of copyright piracy in foreign countries.

Senate bill 1822 would give these countries an incentive to stamp out piracy by restricting access to the United States printing business if they do not provide adequate copyright protection. So there is at least some hope extended to American authors and American publishers in this bill. Why would you reject this weapon for the protection of American copyrights?

Mr. HOOPES. Excuse me, sir. Are you referring to the certification process in the Thurmond bill?

Senator MATHIAS. In S. 1822 there is——

Mr. KARP. Senator, you are asking why we do not support 1822?

Senator MATHIAS. Yes. Does it not have some value for you?

Mr. KARP. No, none at all.

Senator MATHIAS. No redeeming value?

Mr. KARP. No redeeming value. I go back to Justice Brennan—utterly no redeeming social value. The manufacturing clause has been in the law all these years and it has not had any influence on piracy abroad because the piracy we are concerned with is printing and publishing in countries that have weak or nonexistent copyright laws.

The real solution to that is to get the United States further into the international copyright community, and also to give our trade and State Department representatives a posture of compliance with the mores of the rest of the advanced copyright countries which, among other things, includes ending the manufacturing clause.

I think it weakens our position to prevent that piracy when we try to do these negotiations with the manufacturing clause in the Copyright Act. It is one of the things that is pointed out as an example of American hypocrisy when we go to the Pacific to preach copyright rectitude.

Mr. STEWART. I would like to add that I find it a strange irony that S. 1822 is proposed as a possible way of helping American authors to avoid piracy when what it is going to do is prevent American authors and photographers and illustrators from publishing at all or present them with the Hobson's choice of publishing and having no copyright and permitting everybody to rip them off all over the world.

Senator MATHIAS. Isn't it true that you have supported other legislation which provides some trade benefits to a foreign country on the condition that it would enhance copyright protection?

Mr. KARP. I am not sure I understand, sir. Do you mean barriers in other countries?

Senator MATHIAS. Yes.

Mr. KARP. Well, there are barriers which are not conditions to copyright and which are not copyright related. There are barriers—for example, it is claimed that it is a barrier because a given country subsidizes its printing industry.

I do not consider that a copyright barrier or even a barrier on freedom of expression. That is something unrelated to the author's rights. As the Copyright Office 1981 report indicated, those are economic factors that do not prevent the author and publisher from making the decision about where to publish. They may take them

into account; it may weigh, but if they choose, they can publish in any country.

The manufacturing clause does not even let them make that determination; it does not let them weigh those factors. To deal with that kind of barrier, you deal with it on a trade-related basis, not a copyright basis.

Senator MATHIAS. And as you say, you give no weight whatever, utterly no weight, to whatever protections may be advanced by S. 1822?

Mr. KARP. No, I do not think so. I could argue with much more zest for a manufacturing clause in the Patent Act or the Trademark Act than I could for the Copyright Act. It makes a little sense there; it makes no sense here at all.

Senator MATHIAS. Let me ask Ms. Ratliff if she could discuss the possible effects of an expansion of the manufacturing clause on efforts to eradicate illiteracy.

Ms. RATLIFF. I am sorry; I did not hear you, Senator Mathias.

Senator MATHIAS. Do you see any possible effects of the expansion of the manufacturing clause on efforts to eradicate illiteracy?

Ms. RATLIFF. Well, I think any time you raise the price of books, people are going to have less opportunity to buy. People who are illiterate have very little expendable extra cash as a rule. How can they buy books if they are increasing the price?

It certainly affects us. We have seen the price of juvenile books rise over the last—oh, since 1977 I think the average price of an average book has risen from about \$6.50 to over \$10, and that has affected my budget. It certainly would affect an individual's budget.

Senator MATHIAS. So you can buy fewer books with the same money?

Ms. RATLIFF. Sure, and if the price of a single book goes up more than other books, then chances are I will not buy that expensive book if I can buy two of something else.

Senator MATHIAS. I think it is true that there is probably some correlation between the availability of books and the general literacy rate. When printed material is more available, more people have an incentive and an opportunity to learn to read.

Mr. Cheshire, if the cost of producing books goes up significantly, what is it going to do to industry practices?

Mr. CHESHIRE. Pardon me. Would you repeat that last part of the question?

Senator MATHIAS. What will it do to industry practices? What will the effect on the industry be?

Mr. CHESHIRE. Well, as I said in my testimony, it will really have two effects. There will be certain types of books—well, actually, three effects. There are certain types of books that will simply be unprofitable to produce any longer in this country.

I am speaking now of full-color picture books that have a more limited market. Every book is different, you know, from any other book, and there are certain books that just by their very nature have a somewhat limited market. So there will be certain types of books that will just be cut out entirely and will no longer be published.

The other types of books that are printed in this country and probably still will be printed in this country—the cost of those books would go up. The retail prices of picture books have risen dramatically.

Beginning this fall, we started to see—I think the upper limit of the price of children's picture books has really been \$12.95 for a number of years now. For the first time this year, we started to see books at——

Senator MATHIAS. It used to be the upper limit of the price of all books.

Mr. CHESHIRE. Well, that is true. In fact, one of the things that I wanted to point out is that if a publisher in this country wants to try and reduce the retail prices of their books and reduce their expenses, they can look at all of the things that they spend their money on and try and find other suppliers for those services.

They can move their offices out of New York if their rent goes up too much. They can use express mail instead of Federal Express for sending their manuscripts back and forth if they want to.

But when it comes to books that are now covered by the manufacturing clause, if a publisher wanted to accept the problems of timeliness of getting reprints in order to keep a certain type of book in print that has a very low sale, they are not able to really compete in the world market.

But to get back a little bit to your question, because books by foreign authors would not be covered, we would be able to simply increase the number of foreign picture books that we import and sell into this country.

There have already been dramatic increases in the number of foreign picture books that are imported into the United States. The reason for that is simply that there are many very good books being done overseas that should be read here. Also, the children's book business has been enjoying something of a resurgence in the last few years.

But I can tell you that if someone were to say tomorrow—let us say our company publishes 20 full-color picture books a year and 15 are by American authors and illustrators and 5 are by foreign authors and illustrators—and someone tomorrow said that I could no longer do any books by American authors and illustrators.

Next year, I could publish 20 picture books; they would just all be by foreign authors and illustrators.

Senator MATHIAS. There are so many questions here that I am going to have to do with you as I have done with other panels, which is to submit some questions to you in writing and ask for your responses. Let me ask you just one last question.

The Register of Copyrights has suggested two alternatives to the approach of these bills. One would be to erect some sort of tariff barrier to imports. The other would be to allow the manufacturing clause to expire, but on the condition that it would automatically be resurrected if imports did, in fact, swell in such volume that it triggered a revival. Does either of those alternatives appeal to this panel?

Mr. HOOPES. Well, may I try to answer? I do not like the first alternative. The second alternative would be to let the clause expire, but with the possibility of its being resurrected in the event

of genuine harm. I think the publishers would probably agree to that, with the proviso that it would not be resurrected in the copyright bill, but would be put into a trade bill where I think it belongs.

Mr. KARP. Senator, I could not disagree more.

Senator MATHIAS. You could not disagree more?

Mr. KARP. With what my colleague has just said.

You cannot have an embargo on books entering this country, whether it is in the copyright law or the trade law. What you can do is use the various trade methods described in more detail and with more accuracy in the testimony of both the Trade Representative and others and in the Copyright Office's testimony at prior hearings.

There is a whole range of trade devices that can be used to protect. But simply to pass a law saying, whether it is a condition of copyright or in a trade law, that no book by an American author printed abroad can be imported into this country—that law, to me, would be just as objectionable—whether in the Copyright Act or any place else. I think it would be objectionable to the great mass of American publishers, too.

Mr. HOOPES. I claim to have been misunderstood on that point, Mr. Chairman.

Senator MATHIAS. That is a common problem around here. Do you want to expand on that?

Mr. HOOPES. Well, I said that fundamentally we would like to see the manufacturing clause eliminated, but that if there are trade problems that arise for the printers or others, they should be treated in the trade context, in the context of the 1974 Trade Act, and in the context of the Florence Agreement.

Mr. KARP. Mr. Chairman, can I just say one thing? The whole struggle for the first amendment in this country really grew out of an opposition by printers to being licensed by the crown.

I think we might remember that what the manufacturing clause is is a license to American printers, and no others, in this area of printing. It is sort of ironic that we should have come that full circle where the printers, who should be the first proponents of freedom to print where you want, are asking for an exclusive license from the crown.

Senator MATHIAS. On that solemn constitutional warning, we will recess this hearing. I ask that you return the responses to the written questions just as promptly as you can. We appreciate your being with us today.

[Whereupon, at 12:38 p.m., the subcommittee was adjourned.]

APPENDIX

ADDITIONAL SUBMISSIONS FOR THE RECORD



THE DEPUTY SECRETARY OF COMMERCE
Washington, D.C. 20230

JAN 17 1986

Honorable Charles McC. Mathias, Jr.
Chairman, Subcommittee on Patents,
Copyrights and Trademarks
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mac,

Secretary Baldrige is currently out of Washington but has asked me to thank you for your letter on S. 1822 and S. 1938 and to make sure that you are made aware of the Department's views before the hearings now scheduled for next week.

These bills would make the manufacturing clause a permanent part of our copyright law. This clause forces American writers to have their books and certain other printed material manufactured in the United States or Canada if they want full copyright protection. If the works are manufactured elsewhere and imported into the United States they may be seized, forfeited or, under certain conditions, reproduced without fear of liability for copyright infringement.

The President was right to veto legislation four years ago extending the life of this clause and I hope that he will not have to make this decision again. It should be allowed to expire in July as scheduled. The clause no longer serves any proper purpose. It was enacted in 1891 to secure the support of the domestic printing industry for legislation granting copyright protection to works of foreign authorship that had been

unprotected and were freely copied. Its retention in some form for nearly a century is an acute embarrassment.

S. 1938 would simply make the clause permanent. S. 1822 would go further and expand its coverage to all printed material, remove certain exceptions, and establish a procedure for exempting imports from nations having no barriers to trade in printed material and which also provide adequate copyright protection for U.S. authors. It evidently proceeds upon the theories that the clause can be a useful bargaining chip and that the printing industry will suffer severe losses if it is allowed to expire.

These considerations are without merit. The "bargaining chip" theory is particularly weak. Any force this argument may have had was eliminated by the 1984 decision of the GATT Council holding the clause to be inconsistent with our GATT obligations. I agree with Ambassador Yeutter that the more likely results of continuing the clause will be the withdrawal of concessions granted to the United States by countries that are concerned about import competition from the United States and a general worsening of our relationships with our trading partners.

Moreover, we should not jeopardize the economic interests of other industries for the benefit of a printing industry that is relatively healthy and which has displayed an ability to compete successfully in international markets even when the strength of the dollar was causing severe problems for other exporters. Foreign demand for U.S. printed matter reached \$1.3 billion in 1985, of which \$600 million was for books. Imports amounted to \$1.2 billion, of which \$560 million was for books. In short, even though the U.S. printing industry has never been an aggressive international competitor, it maintains a favorable balance of trade and ranks second in trade behind the printing industry of West Germany. I can only conclude that industry claims of severe dislocation and the impossibility of competing with low-wage foreign competition are exaggerated. The same fears have been routinely raised each time the clause has come up for renewal.

Our studies suggest that book printing industry shipments should show average annual increases of 3% through the end of the decade. Increases in school enrollments, in disposable income and in the number of bookstores should all lead to a larger book-reading public. Improved technology should lead to greater efficiency in book printing and should also increase domestic printers' ability to respond to publishers' needs. Foreign demand should remain high. Indeed, a number of printers have anticipated the clause's expiration and have entered into arrangements with foreign firms as a means of protecting their competitiveness at home and in overseas markets. These efforts should be encouraged. Extension of the clause would reduce the incentive to seek new export opportunities.

These bills are also bad from the standpoint of sound intellectual property policy. One of the greatest problems in this area is convincing other nations of the need to enact strong copyright laws and to improve their systems of protecting patents and trademarks. Their failure to do so permits some of their citizens to benefit from the unprotected status of U.S. and other foreign works and to resist efforts to protect them, much as our own printing industry resisted extending copyright protection to foreign works during the nineteenth century. It is very difficult for the United States to convince these nations to resist the

demands of narrow interests that have profited from a lack of adequate protection for intellectual property and from illegal trade restraints if the United States itself cannot resist them.

In addition, the clause would seriously impede our efforts to bring our law into compliance with standards necessary for adherence to the Berne Convention, which provides greater copyright protection than the Universal Copyright Convention. The Berne Convention limits the imposition of "formalities" as a condition of copyright protection. It is generally recognized that manufacturing requirements are such formalities. Our claims of world leadership in intellectual property protection are undermined by failure to adhere to this Convention and it is against our interests to maintain impediments.

Finally, at a time when we should be looking forward to the expiration of this clause, S. 1822 would broaden its coverage. It would (a) eliminate the exemption for material manufactured in Canada; (b) apply the requirement of domestic manufacture to all material printed in English by American authors; (c) allow a person to infringe the copyright of a work violating the clause without having to show that the copyright owner authorized the prohibited act, as is now required; (d) eliminate an exemption for distribution of no more than 2000 imported copies; and (e) eliminate an exemption for certain works first published abroad under license from an American author. In addition, it would create an ambiguity as to whether a court may invalidate the copyright of an offending work.

These provisions are unjustified. It is wrong to eliminate an exemption for Canada in light of USTR's recent initiation of discussions with that nation aimed at eliminating some of its practices which may affect trade in printed material. Expanding the clause to all printed materials would harm consumers by limiting competition with respect to children's books, art books and possibly others that do not now meet the technical requirements of the clause. Denying copyright protection to a work because copies of it were imported or distributed without the consent of the copyright owner unfairly penalizes authors who have obeyed the law. Eliminating the exemption for 2000 copies may make it prohibitively expensive for publishers to test market books in the United States. Eliminating the exemption for works the distribution rights to which were transferred may unfairly penalize authors who have no other practical way of having their works published.

I have directed Under Secretary Smart and Commissioner Quigg to provide you with any additional technical information you may require.

The Office of Management and Budget has advised us that there is no objection to the submission of this report and that enactment of either bill would not be in accord with the President's program.

Sincerely,


Deputy Secretary

THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON
20506

January 21, 1986

The Honorable Charles McC. Mathias, Jr.
United States Senate
Washington, D.C. 20510

Dear Senator Mathias:

I appreciate the opportunity to give my views on the recently introduced bills to extend the "manufacturing clause" of the U.S. copyright law.

The Senate has two bills pending. S.1938, which is identical to H.R. 3465, simply would eliminate the expiration date, thereby extending the clause, in its current form, indefinitely. S.1822 would extend the clause indefinitely; expand the scope to include all copyrighted printed material, in the English language, by a U.S. national or domiciliary; eliminate the exceptions for importation for distribution of up to 2000 copies and for works the distribution rights to which have been transferred or licensed to a foreign party; eliminate the waiver for works "manufactured" in Canada; and eliminate the requirement that, to be a violation of the clause, imports must be by or with the authority of the copyright owner. S. 1822 also would authorize USTR to waive application of the clause to foreign countries by certifying that the country in question has no tariff or non-tariff trade barriers to imports of U.S. printed materials and that it provides adequate and effective protection to copyrights.

Extension of the clause in any form would be inconsistent with U.S. obligations under the General Agreement on Tariffs and Trade. In May of 1984, with the concurrence of the United States, the GATT Council adopted the report of the panel which had reviewed the E.C.'s complaint regarding the 1982 extension of the clause. The report, a copy of which is attached, concludes that the extension of the clause in 1982 created new legislation, unprotected by the exception for "existing legislation" provided in paragraph 1(b) of the Protocol of Provisional Application of the GATT. In other words, the 1982 extension isn't "grandfathered." (The United States had notified the GATT, in 1954, that the "manufacturing clause" was an import restraint, inconsistent with Article XI of GATT, but that, as "existing legislation", it was excepted from our obligations.)

The Council recommended that the United States bring its practice into conformance with its obligations within a reasonable time. If we again extend the clause, in whatever form for whatever time, we would be demonstrating a clear disregard for the international obligations of the United States, and particularly a dispute settlement process advocated by the United States in order to protect our economic interests. Such action could also undermine seriously several years of painstaking effort to institute a new round of trade negotiations to improve the rules governing the world trading system. Important decisions regarding the subjects to be discussed in any new round and the process to be followed will be made in the late spring and early fall of 1986. Those who wish to derail the new round could use reenactment of the manufacturing clause to question the credibility of the United States, particularly regarding our expressed desire to improve the dispute settlement process.

The existence of the manufacturing clause also weakens U.S. bilateral efforts to improve copyright and patent protection in foreign countries. Many developing countries are concerned, as we were in 1891 when we extended copyright protection to foreign works under the Chace Act, that improved copyright protection will result in injury to the domestic interests that have profited from the lack of protection. We resist compulsory licensing provisions or other limitations on rights designed to protect those domestic interests, but the other side often cites our own example and points out that we still retain the manufacturing clause although our printing industry is one of the most competitive in the world.

Some supporters have argued that S.1822 would enable us to open other countries' markets to exports of U.S. printed materials by authorizing USTR to waive application of the clause for countries that eliminate their non-tariff and tariff barriers and protect U.S. works under copyright. The opposite more likely would occur. GATT signatories that believed they were injured by a further extension of the clause would be entitled to seek compensation. A GATT finding that the United States should provide compensation would be a certainty, given the panel decision, while waiver of the clause merely would allow one segment of a country's printing industry to try to compete in our market. Since we have no authority to provide additional concessions, we would have concessions given us by the other country taken away. The country involved very likely would choose to withdraw benefits that protect its important industries against import competition from the United States. Loss of those concessions could have a serious impact on U.S. industries uninvolved in printing.

The European Communities already has reminded us of the GATT decision regarding the "manufacturing clause" and asked for assurances that the Administration will reject any extension. When the E.C. complained in the GATT about the 1982 extension, it claimed that it was entitled to \$250 million in compensation for the four year extension of the clause. Further extension for an indefinite period would lead to an even more dramatic claim. We would find few sympathetic ears if we argued that little harm would result, since, presumably, the clause wouldn't have been extended unless the United States itself believed that foreign printing industries would capture a significant portion of the U.S. market.

Supporters argue that S. 1822 is really aimed at Canadian barriers to exports of U.S. printed materials. First, I must point out that the duty free treatment Canada currently gives certain printed materials would cease because that treatment is scheduled to expire if the U.S. manufacturing clause is applied to printed materials manufactured in Canada. Second, USTR already is negotiating regarding some of the barriers complained of by the printers and has listed them in the Trade Estimates Report submitted to the Senate Finance Committee and the House Ways and Means Committee under section 303 of the Trade and Tariff Act of 1984.

Many of the practices of other countries complained of by the printers are trade barriers, and are the subject of trade discussions. Some practices (e.g., the British Royal patent on the King James version of the Bible, censorship laws of most foreign countries, internal taxes, and price controls) are not trade barriers. We may disapprove, but no evidence has been presented to show that the measures are applied in a discriminatory manner or as a disguised restriction on trade. Elimination of tariff and non-tariff barriers is best accomplished through multilateral and bilateral trade negotiations, or, where the barriers are unfair, through existing trade laws like section 301 of the Trade

Act of 1974 or through the GATT. GATT action would be impossible so long as we ourselves maintain an import prohibition on printed materials that the GATT has found to be inconsistent with our obligations.

We defer to the Office of the Register of Copyrights and to the Patent and Trademark Office regarding the changes to the scope of the clause proposed in S. 1822, and the effect its extension would have on our ability to adhere to the Berne Convention.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of either bill would not be in accord with the President's program.

Sincerely,

A handwritten signature in dark ink, appearing to read "Clayton Kautter", is written over a pre-printed name. The signature is stylized with a large, sweeping initial "C".

Clayton Kautter



February 4, 1986

The Honorable Charles McC. Mathias, Jr.
 SR-387 Russell Senate Office Building
 Washington DC 20510

Dear Senator Mathias:

The Computer and Business Equipment Manufacturers Association (CBEMA) objects vigorously to legislation that would permanently extend the current manufacturing clause (S. 1938) or extend and expand the manufacturing clause (S. 1822). CBEMA's objections are based on our members' use of copyrightable material such as manuals that are an essential part of their products. Our objections are also based on broader international policies appropriate to the United States in the late 1980s.

Either form of the manufacturing clause damages the competitive ability of U.S. industry. It forces companies either to make uneconomical decisions on where essential product material is printed or to abandon copyrights on this material such as by removing the copyright notice on imported copies of the material. The GATT has determined the manufacturing clause to be illegal. To renew and expand an internationally illegal measure on the eve of a new round of GATT negotiations is unwise. It most likely will be the catalyst for some form of trade and/or intellectual property rights retaliation by other countries against the United States.

The clause is also incompatible with U.S. adherence to the Berne Convention from the standpoint of international legal requirements and political issues as the United States Government works toward achieving adequate and effective protection for intellectual property rights. A case in point is the on-going Korean Intellectual Property Rights 301 investigation.

CBEMA advocates conforming with GATT and adhering to Berne. Our industry is keenly interested in positions being taken that ultimately support protection for, and enforcement of, intellectual property rights everywhere. Such positions are in the best interests of the United States.

To remain competitive, the U.S. computer and business equipment industry must manufacture worldwide, utilizing the unique efficiencies different countries offer. Clear, concise manuals explaining the use and service of the equipment must accompany all product shipments. When the manufacturing of a product is offshore, sound business practice dictates that the accompanying written matter be printed in the same location. Manuals must be updated frequently to reflect product refinements; only the manufacturing plant has the expertise to ensure that technical changes are accurately reflected in the manual.

The Honorable Charles McC. Mathias, Jr.
February 4, 1986
Page 2

Under current law; manuals printed abroad with a U.S. copyright in excess of 2,000 copies cannot enter the U.S. with U.S. Customs approval. The realistic alternatives available are:

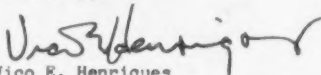
- 1) Rewrite the manual, using a foreign author, and obtain a foreign copyright. Usually, this is either impossible or not practical. Moreover, it would mean fewer jobs for technical writers in the United States.
- 2) Incur the increased costs of printing in the U. S. and shipping to the overseas manufacturing facility for packing with the equipment.
- 3) Abandon the U.S. copyright by filing a notice of abandonment with the U.S. Copyright Office.
- 4) Assume the risk of U.S. Customs penalties for illegal importation.

Although some may assert that the threat of damage from abandoning a copyright on a product-specific manual is small, we disagree. First, some documents have value that could benefit competitors. Second, supplementary manuals focused on specialized uses of the product are occasionally sold separately. Third, when a patent or trademark is violated, often the copyrighted manual is also infringed. We are aware of an instance where the copied manual was instrumental in proving patent infringement.

The copyright statutes are an inappropriate vehicle for trade relief. The objective of the manufacturing clause does not concern the protection of U.S. copyrights. Accordingly, whenever the U.S. printing industry is adversely affected by foreign trade, redress is available under sections 201 or 301 of the Trade Act of 1974.

CBEMA urges that Congress allow this aberration of copyright law to expire. Efficient, export-oriented American industries should not continue to be penalized by an anachronism that is illegal under international trade law.

Sincerely,


Vico E. Henriques
President



Graphic Arts Industries Association
Association des Industries Graphiques

Suite 906, Fuller Building, 75 Albert Street,
Ottawa, Ontario K1P 5E7 Telephone 613 236-7208

February 25, 1986

Hon. Charles Mathias, Jr.
Chairman of Sub-Committee on Patents,
Copyrights and Trademarks
Committee on the Judiciary
Dirksen Building
Room SD-137
First and C Street N.E.
WASHINGTON, D.C. 20510
U.S.A.

Attention: Mr. Randy Collins

Dear Mr. Mathias, Jr.:

Graphic Arts Industries Association (GAIA) is Canada's national organization for the printing and allied industries.

GAIA has become aware of testimonies to your sub-committee which have criticized Canadian practices with respect to trade in printed matter between the two countries. These criticisms were meant to support those proponents who wish to see an expansion of the Manufacturing Clause of the Copyright Act and the removal of the existing Canadian exemption.

We oppose application of the Manufacturing Clause to Canada for the reasons set out below and would appreciate this letter being made part of the record of your proceedings.

The United States now enjoys a significant surplus in printing trade with Canada. Attached to this letter as Appendix A are recent trade figures in printing products between the United States and Canada.

These statistics (in Canadian dollars) indicate:

1. For the largest trade category, book and pamphlets:

- Between 1979 and 1984 Canadian exports grew \$55,160,000 or 191%.
- For same period, U.S. exports grew \$208,710,000 or 74%.
- Canadian growth in percentage terms outpaced that of U.S. but:
 - Considering the high U.S. penetration of the Canadian market this is not surprising. According to Statistics Canada publication "Printing, Publishing and Allied Industries", catalogue No. 36-203 Canadian firms produced and sold a total of \$152,612,000 in books and pamphlets in 1983. U.S. imports of this category in 1983 were \$364,128,000 - 2.4 times that produced in all of Canada and well over half of Canadian consumption.
 - The increase in books and pamphlets imported from the U.S. between 1979 and 1984 is 2 1/2 times the total Canadian exports in 1984.

2. Between 1979 and 1984:

- Overall printing imports from the U.S. have increased \$482,784,000 or 71%.
- The U.S. trade surplus in printing has increased \$251,232,000 or 45%.
- The growth of U.S. exports to Canada from 1979 to 1984 was more than the total exports from Canada in 1984.

3. The most recent data on Canadian printing industry production by Statistics Canada reports that the total value of Canadian commercial printing was \$2,801,998,000 in 1983. In that same year, printed imports from the U.S. were \$1,040,214,000 - equal to 37% of Canadian production and 27% of the domestic consumption.

4. Total U.S. printing exports to Canada in 1984 of \$1,165,772,000 were 3.3 times the value of Canadian exports to the U.S. Considering the Canadian population is about 1/10 that of the U.S., the ratio of penetration of the printing markets is 33:1 in favour of the U.S.

We believe that these figures demonstrate clearly that Canada is not an unfair trading partner.

Certain observations made by attendees at your hearings are true. For some categories of printing, Canadian tariffs are higher than those of the United States. However, in the context of the overall trade in printing between the two countries and the obvious surplus enjoyed by the United States, can these really be that material?

With respect to Canada not ratifying the Florence Agreement, the same effect was achieved by the Canadian Government's zero rating of books imported from the United States and this was viewed in this country as a quid pro quo for the Canadian exemption from the Manufacturing Clause. The value of this zero rating can be seen in the sizeable U.S. surplus with Canada in the book trade of \$408,000,000 in 1984.

Moreover, even though Canada has adopted certain domestic measures in support of our cultural industries, more than half of the magazines sold in Canada originate from the United States and there is no tax or tariff on their distribution. The U.S. trade surplus in magazines and periodicals of \$308,000,000 in 1984 is second only to books and pamphlets.

Canada and the United States enjoy a healthy and mutually beneficial trade exchange in printed products. It is important to the Canadian printing industry that the current situation continue and the Manufacturing Clause not apply to Canada. It is clear that the current access provided to the Canadian market is extremely important to American printers and a significant source of employment to them.

Sincerely,

Willy Cooper
President

WC/lc

Att.

TRADE STATISTICS IN PRINTED PRODUCTS BETWEEN U.S. AND CANADA

Canadian \$000

COMMODITY

	1979		1984			
	Exports from Cda to U.S.	Imports from U.S. to Cda	Net Balance U.S. favour	Exports from Cda to U.S.	Imports from U.S. to Cda	Net Balance U.S. favour
Newspapers	18,585	5,967	(12,618)	64,872	21,047	(43,825)
Magazines and Periodicals	37,805	236,152	198,347	111,023	419,198	308,175
Books and Pamphlets	28,845	283,335	254,490	84,005	492,045	408,040
Mags, pictures, Greeting cards and Music	4,776	20,143	15,367	10,728	23,741	13,013
Advertising Matter NES	1,802	39,139	37,337	8,399	48,359	39,960
Printed Matter NES	32,288	98,252	65,964	76,626	161,382	84,756
	<u>124,101</u>	<u>682,988</u>	<u>558,887</u>	<u>355,653</u>	<u>1,165,772</u>	<u>810,119</u>

SOURCES:

Statistics Canada,	Catalogue 65-202, Export Merchandise Trade, 1979
"	" Catalogue 65-004, Exports by Commodities, December, 1984
"	" Catalogue 65-203, Imports Merchandise Trade, 1979
"	" Catalogue 65-007, Imports by Commodities, December, 1984

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**United States Council for
International Business**

Serving American Business as U.S. Affiliate of

The International Chamber of Commerce
The International Organisation of Employers
The Business and Industry Advisory Committee to the OECD
The ATA Carnet System

February 25, 1986

Senator Charles Mathias
Chairman
Subcommittee on Patents, Copyrights
and Trademarks
Senate Judiciary Committee
Dirksen 137
Washington, D.C. 20510

Dear Senator Mathias:

The Committee on Intellectual Property of the United States Council for International Business welcomes the opportunity to submit its views on the revision of the "Manufacturing Clause" of the 1976 Copyright Act. Enclosed is the Committee's comments on the proposed legislation concerning this issue, which we were unable to present at the time of the hearings.

The Committee wishes to go on record in opposition to legislation extending the manufacturing clause for the reasons outlined in the enclosed statement.

Sincerely,

C.T. Clemente
Chairman
Committee on Intellectual Property

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**United States Council for
International Business**

Serving American Business as U.S. Affiliate of

The International Chamber of Commerce
The International Organisation of Employers
The Business and Industry Advisory Committee to the OECD
The ATA Carnet System

February 20, 1986

**Committee on Intellectual Property
Statement on Extension of the "Manufacturing Clause"
of the 1976 Copyright Act**

The United States Council's Committee on Intellectual Property appreciates the opportunity to make a statement on S. 1822, the Manufacture and Public Distribution of Certain Copyrighted Material Act. This Act would amend the "manufacturing clause" in the Copyright Act of 1976 by prohibiting all foreign manufacture of "printed material" of U.S. works, unless the U.S. Trade Representative certifies that certain conditions have been met in the foreign country in which the U.S. work is to be printed. The following statement also pertains to S.1938, H.R. 3465, and H.R. 3890, which would extend the manufacturing clause indefinitely.

The United States Council Committee on Intellectual Property opposes the extension of the manufacturing clause in any form for two major reasons:

- ° The manufacturing clause is a major barrier to U.S. adherence to the Berne Convention for the Protection of Copyright;
- ° The manufacturing clause has been found to be in violation of the GATT and its extension could lead to retaliatory measures by our trading partners.

A major barrier to U.S. adherence to the Berne Convention

In its policy statements over the past year, the United States Council has called for increased efforts to supplement and reinforce the existing international conventions that play a critical role in providing a base of international protection for intellectual property. A major recommendation of the Council has been that the U.S., as a step in showing its determination to uphold high standards for intellectual property protection in world trade, should adhere to the Berne Convention for the Protection of Copyright.

American creativity has always shaped the products and services that enable us to trade with other countries. To an ever-increasing extent, the prosperity of the American economy and our competitiveness in international trade has come to depend upon industries where the expression of an idea is the principal component of the product or service. This kind of intellectual creation--ideas, information, programs, images, sound--is expressed in a widening array of products protected by copyright. Without the protection of internationally-accepted copyright rules, U.S. industries cannot effectively compete in world markets, cannot fund the investment necessary to continue to innovate, and cannot continue to lead the information revolution.

The Berne Convention for the protection of copyright, to which the United States is not yet signatory, provides the highest standards of protection presently available internationally. For that reason and because the Berne Convention represents the best hope of elaborating and establishing adequate and effective standards of copyright protection to govern present and future international trade, the Congress, the Executive, and the nation are now considering early adherence to Berne and a national consensus to that end is emerging.

In Violation of the GATT

As a quantitative restriction on imports, the manufacturing clause violates U.S. obligations under the GATT. In 1954, the U.S. notified the GATT that the manufacturing clause was excepted from our GATT obligations as "existing legislation." As a result of the extension of the manufacturing clause in 1982, and a complaint by the European Communities in this regard, the GATT Council concluded that the 1982 extension did not qualify as "existing legislation" and was inconsistent with U.S. obligations. At that time, the E.C. claimed that it was entitled to \$250 million in compensation for the 1982-1986 extension.

A further extension or expansion of the clause not only would show a continued disregard for U.S. trade obligations, but also invite retaliation. This kind of action would be particularly unfortunate at a time that the U.S. is pressing for a new round of multilateral trade negotiations aimed at strengthening the GATT and its dispute settlement process, and the introduction of intellectual property issues, including copyright, into its agenda.

The United States Council has been at the forefront of efforts to strengthen the GATT in order to advance the open trading system, and improve intellectual property protection. Extending the manufacturing clause would signal to the world that the U.S. is unwilling to accept the present obligations of the Berne Convention, which we urge others to join and propose to join ourselves, and that we are unwilling to fulfill our present obligations under the GATT even as we seek to bring intellectual property issues into GATT as a means of securing extended and more dependable international copyright protection.

In sum, though S.1822 seeks to ensure protection of U.S. material printed abroad, it does so by extending existing protectionist legislation that contravenes U.S. trade obligations. The same goal of securing protection for U.S. works is currently being pursued through existing U.S. trade legislation, bilateral efforts, and through the GATT. These comprehensive efforts could be undermined were the manufacturing clause to be extended.

The United States Council for International Business is a membership organization that represents American business interests on international economic policy issues to the major international economic institutions, and to the executive and legislative branches of the U.S. Government. Its primary objective is to promote an open system of world trade, finance, and investment.

The Council is the U.S. business organization that officially consults with the major intergovernmental bodies influencing international business. It represents business views at the Organization for Economic Cooperation and Development (OECD) as the U.S. member of the Business and Industry Advisory Committee (BIAC) to that organization. As the U.S. member of the International Chamber of Commerce (ICC), it consults in various United Nations bodies; for example, the World Intellectual Property Organization (WIPO), which serves as the Secretariat to the Berne Convention, the U.N. Economic and Social Council (ECOSOC), and the U.N. Conference on Trade and Development (UNCTAD).

Canadian Embassy



Ambassade du Canada

1746 Massachusetts Ave., N.W.
Washington, D.C. 20036-1985.

February 26, 1986

The Honourable Charles McC. Mathias,
387 Senate Russell Office Building,
Washington, D.C. 20515.

Dear Senator ^{Mathias} Mathias,

I understand that your Subcommittee on Patents, Copyrights and Trademarks is currently examining various options dealing with the possible extension of the "Manufacturing Clause" of the United States Copyright Act.

As you can appreciate, my Government is concerned that provisions could be enacted which would severely prejudice the access currently enjoyed by Canadian manufacturers of printed material. I understand also that at hearings which you chaired on January 21, 1986, a number of allegations were made against Canadian practices in trade in printed materials, particularly with respect to the so-called Toronto Agreement.

As you are aware this agreement is an industry agreement which did not involve any undertaking or commitment on the part of my Government. The Canadian Government did, however, in 1979 suspend the application of the 10% Canadian tariff on books on a trial basis, as a result of the Canadian exemption to the manufacturing clause. In 1982 this suspension was extended indefinitely in consideration of the fact that Congress, in extending the manufacturing clause, also extended the Canadian exemption. The Canadian Government has chosen not to sign the Florence Agreement; however, it was never committed to do so. In any event, the suspension of the Canadian tariff has had the same effect in practice for the United States printing industry.

I am attaching for your information a copy of a Diplomatic Note to the Department of State regarding the possible extension of the manufacturing clause. I wish to draw your attention in particular to the extent of our bilateral trade in printed material, which in 1984 reached \$1.5 billion. The surplus enjoyed by the United States in bilateral trade in printed products has risen from \$559 million in 1979 to \$810 million in 1984. Canada is by far the largest export market for U.S. printed material, accounting in 1984 for 40% of U.S. book exports.

As you can appreciate, withdrawal of the access currently enjoyed by Canadian manufacturers of printed materials would lead to re-consideration of the suspension of the 10% duty on books.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Allan".

Allan Gotlieb
Ambassador

Canadian Embassy



Ambassade du Canada

No. 74

The Embassy of Canada presents its compliments to the Department of State and has the honour to refer to Section 601 of the United States Copyright Act, the "Manufacturing Clause". This provision is scheduled to end on June 30, 1986.

Canadian authorities have followed with great interest the hearings held January 21, 1986 before the subcommittee on Patents, Copyrights and Trademarks of the Senate Judiciary Committee on the possible extension of the manufacturing clause. The Government of Canada trusts that the Government of the United States will take a decision on the Manufacturing Clause that reflects the obligations of the United States under the General Agreement on Tariffs and Trade.

However, should a decision be taken to extend this provision, Canadian authorities trust that such an extension would not prejudice the conditions of access that currently apply to printed materials imported from Canada. Canada and the United States enjoy a vigorous and mutually beneficial trade in printed materials.

Canada is the most important export market for United States books, periodicals and newspapers and as such represents an important source of employment for the United States printing industry. United

States exports of printed material to Canada rose from \$683 million in 1979 to \$1.165 billion in 1984.

Canadian exports to the United States have risen by much less and by 1984 Canada's deficit on printed material trade with the United States had risen to \$810 million.

In 1979, the Canadian Government suspended the 10% duty on books on a trial basis. The duty was suspended indefinitely in 1982 in consideration of the fact that Congress, in extending the Manufacturing Clause, also extended the exemption for Canada.

Removal of the access currently enjoyed by Canadian manufacturers of printed material could have a substantial negative impact on bilateral trade in printed products. This action also would prompt the Government of Canada to re-evaluate the current suspension of the Canadian tariff on books. Moreover, re-imposition of the Manufacturing Clause to imports from Canada would be inconsistent with the commitment of our two Governments at Quebec City Summit to reduce bilateral trade barriers.

The Embassy of Canada avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, D.C.
February 26, 1986



CHAIRWOMAN



 UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

February 26, 1986

Honorable Charles McC. Mathias, Jr.
 Chairman
 Subcommittee on Patents, Copyrights and
 Trademarks
 Committee on the Judiciary
 United States Senate
 Washington, D.C. 20510

Dear Senator Mathias:

This is in response to your letter of February 4, 1986, requesting an update of our 1983 study on the manufacturing clause of the copyright law. In particular, we have tried to answer the five specific questions you asked.

1. Have economic conditions since 1983 changed so as to significantly alter the estimates given by the ITC on the impact of expiration of the clause?

The economic conditions underlying our conclusions have not significantly changed since our study was completed. Printing industry wage rate differentials between the Far East and the United States, on average, have remained the same. U.S. paper costs are still among the lowest in the world, and the timing and demand requirements for the different sectors of the book market and the printing industry generally are similar to what they were two and a half years ago. Furthermore, there have been no major changes in printing industry technology in the last few years that would make printing in a distant market more feasible.

2. When evaluating the effect of the clause on printing, what factors do you consider essential?

First, it is important to determine which products are affected by the manufacturing clause. For some printed materials such as paper labels and business forms, the copyright protection lost by printing abroad is of little value. Also a number of printed items, such as catalogues, do not fall under the restrictions of the manufacturing clause because they are mostly pictures and therefore are not covered by the clause. None of these printed materials should be included in an analysis of the potential for lost employment if the clause is revoked.

Second, any analysis of the employment effect of terminating the manufacturing clause should take account of the variability in the amount of labor for producing the different types of printed matter. Some products such as textbooks with hardcovers, sewn bindings and many illustrations require considerably more labor, and therefore are more likely to be manufactured in a low wage country abroad, than other products such as most paperback books.

Third, many books, newspapers and periodicals must be printed according to strict, often very short, deadlines. An analysis of the likelihood of these items being printed overseas must take account of the shipping times and costs.

3. How does the cost of labor affect decisions on where to print?

The cost of labor is an important component of a printer's cost and is thus an important factor in deciding where to have the printing done. However, in our 1983 study, we found that labor accounted for only 9 to 19 percent of the cost of manufacturing most types of books. The attached Table 1 shows the results of a 1983 survey the ITC sent to book manufacturers to answer this question.

4. What other factors besides labor should be considered?

Paper is usually the most expensive single item in the manufacture of a printed item. With regard to books, the ITC found that the cost of paper varied from being a quarter to half of the book's final cost (table 2). Book-quality paper is cheaper in the United States than almost anywhere else in the world.

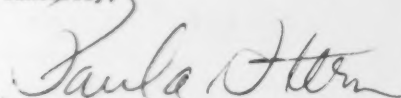
Timing, or the ability to deliver a printed product to the market quickly, is important in determining where to have the printing done. This is because timing is crucial to the marketing of most books and printed items, and therefore proximity to the market is frequently crucial.

5. Is it appropriate to look at the the amount of import penetration from Canada, since Canada's exemption from the clause may be a good indicator of the type of impact that we might expect from expiration of the clause?

Because some of the delivery time problems do not exist with regard to Canada, in our judgment the trade in printed matter between the United States and Canada is not a good indicator of what would happen to U.S. trade with other countries should the clause expire. Also, Canada has inexpensive book-quality paper compared to most other countries. Although imports of printed matter from Canada have grown substantially over the past several years, they are less than exports of printed matter to Canada and they represent less than half of one percent of all U.S. printed matter. Canada's growth as a printer is probably a result of its slight wage advantage, its inexpensive book quality paper, and the fact that it does not have the delivery problems mentioned above. The importance of geographical proximity to the consuming market is substantiated by the fact that much of Canada's printed matter export growth has occurred in U.S. areas contiguous with Canada.

Please contact us if we can be of any further assistance on this or any other matter.

Sincerely,


Paula Stern
Chairwoman

Attachments

Table 1.--Books: Labor costs and total book costs, by specified types of books and by numbers of copies run, 1982

Item	Hardcover	Hardcover	Paperback
	adhesive	sewn	adhesive
	binding	binding	binding
	2,000 copies		
Labor cost per book-----	\$0.46	\$0.54	\$0.39
Book cost-----	2.69	2.92	2.31
Labor as a share of book cost---percent---	17	19	17
	5,000 copies		
Labor cost per book-----	\$0.27	\$0.32	\$0.20
Book cost-----	1.79	1.98	1.46
Labor as a share of book cost---percent---	15	16	14
	10,000 copies		
Labor cost per book-----	\$0.20	\$0.25	\$0.14
Book cost-----	1.49	1.65	1.16
Labor as a share of book cost---percent---	13	15	12
	25,000 copies		
Labor cost per book-----	\$0.18	\$0.20	\$0.09
Book cost-----	1.29	1.41	.94
Labor as a share of book cost---percent---	14	14	10
	50,000 copies		
Labor cost per book-----	\$0.14	\$0.18	\$0.08
Book cost-----	1.20	1.32	.87
Labor as a share of book cost---percent---	11	14	9

Source: Obtained from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 2.--Books: Paper costs and total book costs, by specified types and by numbers of copies run, 1982

Item	Hardcover adhesive binding	Hardcover sewn binding	Paperback adhesive binding
	2,000 copies		
Paper cost per book-----	\$0.68	\$0.72	\$0.68
Book cost-----	2.69	2.92	2.31
Paper cost as a share of book cost			
costs-----percent----	25	24	29
	5,000 copies		
Paper cost per book-----	\$0.56	\$0.55	\$0.56
Book cost---(dollars)-----	1.79	1.98	1.46
Paper cost as a share of book cost			
costs-----percent----	31	27	38
	10,000 copies		
Paper cost per book-----	\$0.52	\$0.52	\$0.52
Book cost-----	1.49	1.65	1.16
Paper cost as a share of book cost			
cost-----percent----	34	32	44
	25,000 copies		
Paper cost per book-----	\$0.49	\$0.49	\$0.49
Book cost-----	1.29	1.41	.94
Paper cost as a share of book cost			
cost-----percent----	37	34	52
	50,000 copies		
Paper cost per book-----	\$0.48	\$0.47	\$0.48
Book cost-----	1.20	1.32	.87
Paper cost as a share of book cost			
cost-----percent----	40	36	55

Source: Obtained from data submitted in response to questionnaires of the U.S. International Trade Commission.

National Music Publishers' Association • Inc.

EDWARD F. MURPHY, President
Chief Executive Officer

February 26, 1986

The Honorable Charles McC. Mathias, Jr.
Chairman
Subcommittee on Patents, Copyrights and
Trademarks
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In closing the Subcommittee's January 21 hearing on S. 1822 and S. 1938, legislation to extend indefinitely the "manufacturing clause" of the Copyright Act, you invited interested parties to comment for the record. The National Music Publishers' Association ("NMPPA") respectfully submits the following comments reiterating the views expressed in our letter to you dated December 11, 1985.

NMPPA is the trade association representing the American music publishing business. Because copyright law is the foundation upon which our business is based, NMPPA's approximately 350 members have a vital interest in the subject of the Thurmond and Metzenbaum bills.

NMPPA strongly opposes the expansion of the scope of the manufacturing clause as embodied in S. 1822. By extending the application of the clause to all copyrighted "printed material that is in the English language," section 2(b)(2) of S. 1822 goes well beyond existing law, which limits coverage to copyrighted English-language works "consisting preponderantly of nondramatic literary material." 17 U.S.C. § 601(a). NMPPA fears that musical works containing English-language lyrics (e.g., musical scores and sheet music) would be subject to the expanded manufacturing requirement. The revision might also encompass printed music accompanied by a preface, acknowledgement or even performance directions.

We would hope that the proposed expansion of the clause to cover any form of printed lyrics was inadvertent. In the 94 years since the manufacturing clause was first enacted, the provision has never been applied to musical works, and there has been no change in circumstances necessitating such an action. We vigorously oppose any attempt to expand the scope of the clause.

CABLE ADDRESS HAF0X
TELEX 237441 HAF0X UR

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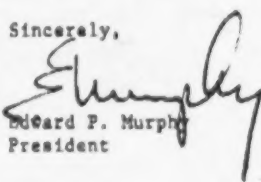
The Honorable Charles McC. Mathias, Jr. -2- February 28, 1986

Moreover, NMPA opposes enactment of any bill that would extend the manufacturing clause beyond the July 1, 1986 expiration date. The clause violates Article 5 of the Berne Copyright Convention to the extent that it applies to works of foreign origin and has been repeatedly assailed by our trading partners as a quantitative restriction on imports violating the United States' obligations under the General Agreement on Tariffs and Trade (GATT).

We believe that further extension of the clause -- in any form -- would demonstrate a disregard by the U.S. for its international responsibilities at a time when our government is interested in adhering to the Berne Convention, strives to promote intellectual property protection by foreign nations, and seeks to begin a new round of negotiations aimed at improving rules governing world trade. It is unreasonable to expect that our trading partners will be receptive to demands for the protection of intellectual property rights if America, itself, steadfastly clings to a manufacturing clause that arguably violates the GATT.

The National Music Publishers' Association appreciates this opportunity to express its views. Should you have any questions or feel we could provide further assistance to the Subcommittee as it addresses this matter, please let me know.

Sincerely,


Edward P. Murphy
President

EPM/bb



THE COMMISSIONER OF CUSTOMS

March 7, 1986

WASHINGTON, D.C.

CPR-3 CO:R:E:E
729326 SO

Dear Mr. Chairman:

Thank you for your letter of February 4, 1986, seeking our assistance on two bills under consideration by your Subcommittee (S. 1822 and S. 1938). If enacted, the bills would modify the manufacturing clause of the Copyright Act and/or make it a permanent part of our copyright law. The clause is due to expire on July 1, 1986.

A decision of the U.S. District Court eliminated problems Customs officers had experienced in deciding if a work consists preponderantly of nondramatic literary material in the English language; Stonehill Communications, Inc. v. John Martuge, New York Area Director of U.S. Customs Service, 512 F. Supp. 349 (S.D.N.Y. 1981). The decision held that the test, according to the legislative history, is a mechanical one, requiring a comparison of the surface area of the text and pictures (or other exempt material), respectively. If there are more square inches of text than pictures, the book (or other printed matter) is found to be "preponderantly" text, and would be subject to the manufacturing restrictions. Otherwise, it would not.

If S. 1822 were enacted, it appears that Customs would be required to identify all foreign printed matter for which copyright protection is claimed and prevent its importation. The importation of instruction manuals associated with imported products, advertising material and phono record covers would be restricted by the new manufacturing clause. However, we are of the opinion that labels (e.g. on clothing with care instructions) would not be susceptible to copyright protection as original works of authorship (17 U.S.C. 102(a)). Also, the Customs Service would have to be advised promptly whenever exemptions are imposed or removed by the U.S.T.R.

We take no position on the need for or the merits of the legislative proposals and would defer to the views of other agencies in this regard. If S. 1822 were enacted, however, we would anticipate that enforcement by the Customs Service would require an increase in the utilization of our personnel, equipment, and facilities. The exact cost of our additional needs cannot be estimated at this time.

If we can provide any additional information or be of further assistance, please feel free to call on us.

Yours faithfully,

The Honorable
Charles McC. Mathias, Jr., Chairman
Subcommittee on Patents, Copyrights and Trademarks
Committee on the Judiciary
United States Senate
Washington, D.C. 20510


Information Industry Association

555 New Jersey Avenue, N.W., Suite 800
 Washington, D.C. 20001
 202/639-8262
 Cable: INFORMASSH WASHINGTON

March 17, 1986

The Honorable Strom Thurmond
 Chairman
 Senate Judiciary Committee
 Washington, D.C. 20510

Dear Mr. Chairman:

The Information Industry Association (IIA), a trade association of over 450 companies pursuing business opportunities in the production, distribution, and use of information, wishes to advise you of its opposition to extension or expansion of the manufacturing clause of the Copyright Act, 17 U.S.C. Section 601 *et seq.* We urge that the Committee report against passage of S. 1822, S. 1938, or any other legislation which would prevent the manufacturing clause from expiring, as scheduled, on June 30, 1986.

At the outset, the information industry recognizes our nation's need for a strong domestic printing industry. Many of our members place heavy reliance on the printing industry to provide information products and services. We would be concerned if the domestic printing industry would be appreciably weakened by termination of the manufacturing clause.

The IIA has two principal objections to the manufacturing clause and one clarification that we wish to state.

First, we strongly agree with the January 21 testimony from the Department of State and the U.S. Trade Representative on the adverse effect of the manufacturing clause upon our international negotiating position. If the U.S. expects foreign nations to respect the General Agreement on Tariffs and Trade (GATT), we should do likewise. The U.S. has been advised that the manufacturing clause is a violation of our obligations under GATT: the U.S. should act accordingly. More importantly, compliance with GATT would put the U.S. in a far stronger position in negotiating for favorable renewal of GATT and its extension to cover services as well as goods. This is especially important given the increasing amount of U.S. exports in the service sector. The U.S. Trade Representative estimated the value of all U.S. service exports at \$60 billion in 1980. The forthcoming Office of Technology Assessment Report to the Congress on service exports no doubt will show substantial growth from that figure. A survey performed by A.C. Nielsen, an IIA member, for the Association suggests that U.S. information firms draw 15% of their revenues from abroad — about \$2 billion in 1983, growing at about 20% per year.

The Honorable Strom Thurmond
March 17, 1986
Page Two

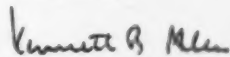
Moreover, to persist in GATT violation strongly invites retaliation by aggrieved trading partners. In all probability, an advantage for the domestic printing industry can only be purchased at the expense of some other U.S. industry, as yet unidentified. To the extent that any printing-related international trade provision is called for, it belongs more properly in the Trade Act than the Copyright Act. If the Committee were to determine that some such measure is appropriate, IIA would support a reciprocal provision in the Trade Act as a replacement for the manufacturing clause. Such a solution would also have the merit of removing the obstacle currently posed by the clause to U.S. adherence to the Berne Copyright Convention.

Second, the IIA has never favored trade protectionist legislation of any kind, whether for its own members or for any other segment of U.S. industry. Special protection for the U.S. printing industry, like that for any other industry, is likely to retard technological innovations. If U.S. printing firms face greater foreign competition, they are more likely to accelerate their use of newer technology and to discard outmoded, inefficient technology. U.S. firms are and should continue to be in the vanguard of high-technology printing. Appropriate technological innovation will assure the U.S. printing industry of competitive advantage over foreign competitors for sound reasons.

Finally, we wish to state for the record our understanding that the manufacturing clause, even if extended, does not affect data in machine-readable form. To quote identical language from the Senate and House reports accompanying the omnibus copyright revision bill, S. 22, 94th Congress, which became the Copyright Act of 1976: "...the importation of computer tapes from which plates can be prepared here would be permitted" (Senate Report 94-473, 94th Congress, 1st Session, p. 150; House Report 94-1476, 94th Congress, 2nd Session, p. 168). We take it that no change in this understanding could be intended by any of the pending bills. Certainly, no change could possibly be to the advantage of the United States, which now enjoys a commanding position in the provision of computer database services worldwide.

The IIA appreciates the opportunity to comment. David Peyton of my staff or I would be pleased to answer any inquiries.

Yours truly,



Kenneth B. Allen
Vice President for
Government Relations

KBA:dpd



Number 11



CAPITOL COMMENT

122 C STREET, NW
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WASHINGTON, DC 20001
(202) 638-1401

EXPIRATION OF THE MANUFACTURING CLAUSE: CLOSING THE BOOK ON PRINTING INDUSTRY PROTECTIONISM

On June 30, the manufacturing clause of the copyright laws will expire. The manufacturing clause is anti-consumer, anti-competition, violates the General Agreement on Tariffs and Trade (GATT), and could very well reduce employment in the printing industry it is designed to protect.

The manufacturing clause requires resident American authors of non-dramatic literary material to print their works in Canada or the United States in order to retain copyright. Its practical effect is that most non-dramatic books, periodicals, newspapers, directories, instruction materials, manuals, and other commercial printing sold in the U.S. must be printed domestically.

From the consumer's standpoint, the manufacturing clause functions much like a tariff and creates economic inefficiency. It limits choice and raises book prices by an average of 12 percent, costing U.S. consumers \$500 million more per year for printed materials. It also distorts consumption and investment, resulting in a \$29 million annual efficiency loss to the economy.

Not only does the reading public bear the burden of the manufacturing clause through higher prices, but American authors suffer since their works must compete against foreign authors whose works may be printed at the most cost efficient locations around the world. In particular, new authors and illustrators are hurt because publishing untested works is made more risky. Therefore many new works may never be published if the manufacturing clause is extended.

Consumers and authors find the manufacturing clause offensive, as do our allies and trading partners within the GATT. The United States has already been held in violation of the GATT because of the manufacturing clause. Its extension will severely undercut congressional attempts to eliminate unfair trade practices abroad, and will be viewed as wholly inconsistent with this country's claims to leadership in the world copyright community.

Furthermore, the Department of State's Ad Hoc Working Group on U.S. Adherence to the Berne Convention has determined that the manufacturing clause is incompatible with U.S. efforts to abide by this international agreement. The strength of the Berne Convention agreement, which is the world's strongest international agreement protecting copyright property rights, depends on the good faith and cooperation of those nations claiming to subscribe to its principles. Consequently, U.S. non-cooperation with this agreement denies authors the higher level of copyright protection afforded by the Berne Convention and results in significantly less secure U.S. intellectual property rights for printed materials.

Note: Nothing in this letter is to be construed as a response to the letter of February 10, 1990, or as an attempt to act in violation of any law or regulation.

Yet, despite these serious deficiencies with the manufacturing clause, Congressman Barney Frank and Senator Howard Metzenbaum are promoting the unlimited extension of the clause in two pending bills, HR 3465 and S 1938. Going one step further, Senator Strom Thurmond has introduced a bill (S 1822) that would make the manufacturing clause permanent and expand its coverage to include all copyrighted "printed material in the English language" and eliminate the Canadian exemption. The justification offered for these bills is to save American jobs. But just the opposite is true.

The Canadian exemption, added to the Manufacturing Clause in 1978, resulted in no job losses within the American printing industry despite an absence of language or transportation barriers. Instead, Canada agreed to lower all its duties on imported materials of a scientific or educational nature from 10 percent to zero. American printers were able to increase their share of the Canadian print market while maintaining their percentage of the domestic market.

The most dramatic effect on American employment would come from inevitable retaliation by the European Economic Community. The E.E.C. has formally announced before the GATT that the manufacturing clause is costing it \$250 million in employment opportunities, and it will retaliate if the clause is extended. Great Britain, which has officially sent members of Parliament to the United States to lobby U.S. congressmen against the manufacturing clause, has vigorously opposed the clause in the House of Commons. Its estimates of damages caused by the manufacturing clause are much higher than those of the EEC, between \$300 and \$500 million. Great Britain has promised that it will encourage the European Community to retaliate against U.S. paper and tobacco products if the clause is not allowed to expire. Furthermore, Canada retains the right to reenact the 10 percent print tariff it removed in the 1970's, and is likely to do so. Any of these retaliatory actions would upset employment in the printing, paper, and tobacco industries. Other retaliation and counterretaliation could affect U.S. agriculture, electronics, and consumer goods industries.

The copyrights of American authors and publishers should not be held hostage to protectionist trade politics. Our reading and consuming public, authors, publishers, manufacturers, and workers should not be forced to pay an unnecessary price to protect the special interests of a few. The manufacturing clause is a roadblock to gaining greater access to foreign markets. Its expiration will increase opportunities for American authors and illustrators and grant consumers a wider variety of less expensive printed products.

Richard Wilbourn
Policy Analyst

U.S. Council for an Open World Economy

INCORPORATED

7216 Stafford Road, Alexandria, Virginia 22307
(703) 765-2472

Statement submitted by David J. Steinberg, President, U.S. Council for an Open World Economy, to the Senate Judiciary subcommittee on patents, copyrights and trademarks in opposition to extension and enlargement of the "manufacturing clause" of the copyright law
February 14, 1986

(The U.S. Council for an Open World Economy is a private, nonprofit organization engaged in research and public education on the merits and problems of developing an open international economic system in the overall national interest. The Council does not act on behalf of any "special interest".)

The copyright law's "manufacturing clause", first enacted in 1891 and liberalized several times over the years, basically requires (with certain exceptions) that a person desiring full U.S. copyright protection for a published work "consisting preponderantly of nondramatic literary material .. in the English language" must have that work manufactured in the United States or Canada. Whatever other justification it might have had during the past 95 years, this Buy American trade barrier does not belong in the copyright law. To the extent that it has had any economic justification, it should have been only a marginal, transitional part of a coherent strategy of government assistance to an industry whose problems and needs have been carefully diagnosed. The manufacturing clause has never served such a role. In fact, this simplistic form of public assistance to this country's extensive printing industry tends to divert government attention from other, more appropriate forms of assistance that may be needed -- in other words, from a more enlightened, constructive and coherent mode of government aid (if indeed the printing industry needs government help at all).

The manufacturing clause is more than a barrier to international trade and to coherent attention to the real needs of the industry for whose benefit this prolonged protectionism has been kept on the books. It is also a barrier to American authors unable to find publishers in the United States, and a barrier as well to American publishers seeking greater flexibility and efficiency for greater competitive effectiveness in an increasingly competitive world.

It is long past time to free the copyright law, U.S. writers, U.S. publishers, and indeed U.S. consumers, from this encumbrance. It is time for enlightened attention to the best interests of all Americans whose lives and livelihoods are affected by this issue -- the needs of the U.S. printing industry no less than those of anyone else. The manufacturing clause should not be continued indefinitely, and most certainly not expanded. Bills to do either should be rejected. A deliberate effort should be made to remove

it entirely in conjunction with both a comprehensive strategy of assistance to the U.S. printing industry (if the industry needs and deserves such help) and a strategy aimed at freer and fairer international commerce.

Repeal of the manufacturing clause (a reform that has long been discussed in international trade negotiations) could be an effective instrument in U.S. efforts to get other countries to make trade and copyright reforms of significant value to the United States. Retention of the clause -- all the more so its enlargement -- would adversely affect prospects for such efforts. In view of declared U.S. intentions in recent years to terminate it (following on efforts to liberalize it), legislation to extend it beyond the current expiration date of July 1, 1986, all the more so to expand its coverage, would be seen around the world as regression to days not favorably remembered.

The nation deserves better, and is capable of better. The U.S. printing industry has an important stake in the health of the U.S. publishing industry, as does the U.S. economy in general. The U.S. publishing industry has an important stake in the health of the U.S. printing industry, as does the U.S. economy in general. If the printing industry needs and deserves help at public expense, it should get the most coherent, constructive assistance available -- a strategy that advances the total public interest from stem to stern.

**STUDY OF THE ECONOMIC EFFECTS
OF TERMINATING THE MANUFACTURING
CLAUSE OF THE COPYRIGHT LAW**

Report to the Committee on Ways and
Means, U.S. House of Representatives,
on Investigation No. 332-145
Under Section 332 of the
Tariff Act of 1930



JULY 1983

United States International Trade Commission / Washington, D.C. 20436

PREFACE

On July 13, 1982, the Congress overrode a Presidential veto ^{1/} of H.R. 6198, which became Public Law 97-215. This law extends the manufacturing clause of the Copyright Act of 1976 until July 1, 1986. That clause had been due to expire on July 1, 1982. In approving H.R. 6198, the Committee on Ways and Means of the U.S. House of Representatives adopted a resolution directing the United States International Trade Commission to undertake an investigation of the economic effects of terminating the manufacturing clause of the copyright law, including an assessment of (1) the effect on employment; (2) the effect on imports and exports; and (3) the long-term effect of expiration on conditions of competition between U.S. and foreign firms engaged in printing and related activities. The Commission initiated the investigation on July 23, 1982. The investigation was conducted under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). ^{2/}

Public notice of the investigation and hearing was given by posting copies of the notice at the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the Federal Register of August 4, 1982 (47 F.R. 33819). The public hearing in connection with this investigation was held on March 16, 1983. ^{3/}

In the course of this investigation, the Commission collected data from questionnaires sent to domestic publishers and printers. Additionally, information was gathered from published sources, from the Commission's data files, from interviews with corporate executives, and from Federal Government sources.

EXECUTIVE SUMMARY

The domestic manufacturing requirements embodied in the manufacturing clause were first established in U.S. copyright law in 1891 as a means of protecting the U.S. printing industry from foreign competition. The law provided that U.S. copyright protection would be given only to works for which typesetting, printing, and binding were done in the United States. Since 1891, the restrictive nature of the manufacturing requirements has generally been reduced. The current manufacturing clause, which is a part of the Copyright Act of 1976, requires, with certain exceptions, that copies of works (1) preponderantly of nondramatic literary material, (2) in the English language, (3) by U.S. citizens or domiciliaries, and (4) of copyrightable material be manufactured in the United States or Canada in order to obtain U.S. copyright protection. The coverage of the current manufacturing clause does not extend to such material as dramatic, musical, or multilingual works. Any creation "fixed in a tangible medium of expression" may be protected by copyright, but copyright owners lose that protection if they violate the manufacturing clause.

In recent years the possibility of eliminating the manufacturing clause has been much studied and discussed. It has been the subject of congressional inquiries, and several private and public studies have been completed regarding the ramifications of such an action. Those who oppose the termination of the manufacturing clause argue that its elimination could result in the loss of U.S. jobs and the transfer of business to foreign printers and binders. Those who favor termination maintain that it does little to protect U.S. jobs or to enhance the competitive position of U.S. publishers, printers, and binders. They point out that the United States is the only major book producer in the world that restricts its book trade through a manufacturing clause embodied in a copyright law. This, they argue,

^{1/} A copy of the President's veto message is reproduced in app. A.

^{2/} The Committee's request and the Commission's notice of investigation as it appeared in the Federal Register are reproduced in app. A.

^{3/} A list of witnesses appearing at the hearing is presented in app. A.

is contrary to our obligations under the General Agreement on Tariffs and Trade (GATT). ^{1/}

The major findings of this study are as follows.

The printing and publishing industry is one of the 10 largest industries in the U.S. manufacturing sector.

The U.S. printing and publishing industry had estimated shipments of \$82.5 billion in 1982; it consists of some 50,000 individual establishments, located in almost every county of every State. The industry employs more than 1.3 million persons and has an annual payroll estimated to exceed \$20 billion.

The industry comprises three primary groups--commercial publishing and printing, book publishing, and book manufacturing. Commercial publishing and printing shipments amounted to \$72.7 billion in 1982, or 88 percent of total printing and publishing shipments in that year. Book-publishing sales in 1982 amounted to \$7.2 billion, or 9 percent of total printing and publishing shipments. Book-manufacturing shipments amounted to \$2.6 billion, or 3 percent of the total.

World production and trade in printed matter is highly concentrated in the developed countries.

The United States, Japan, the United Kingdom, West Germany, France, and Italy account for about 60 percent of world production of printed matter, estimated at \$200 billion in 1981.

In general, trade in this item has occurred between the developed countries of North America and Europe. Of total world exports of printed matter of \$7.5 billion in 1981, the United States and West Germany each had exports worth \$1.3 billion (each accounting for 17 percent of the total); the United Kingdom, \$0.9 billion (12 percent); France, \$0.8 billion (10 percent); and Italy, \$0.5 billion (6 percent). The top 10 exporting countries in 1981, all developed nations, accounted for nearly 85 percent of world exports. The United States is the only one which showed a significant gain in world market share during 1977-81. The leading importers were Canada, at \$839 million (12 percent of the total), France, at \$823 million (12 percent), and the United States, at \$645 million (10 percent).

The study revealed no indication of major expansion of printing capacity or penetration of world markets for printed matter by the low-cost producers of the Pacific Basin.

There have been no significant increases in the shares of world imports

^{1/} During the Multilateral Trade Negotiations (MTN), the European Community (EC) suggested that the subject of the manufacturing clause be added to the nontariff barrier negotiations, but did not pursue the matter after U.S. officials assured it that the clause was scheduled to be eliminated on July 1, 1982.

The EC considers the congressional extension of the clause to July 1, 1986, to be contrary to the understandings reached between the United States and the EC during the MTN. It maintains that the extension has upset the balance of concessions reached during those negotiations. At the request of the EC, two rounds of consultations were held in late 1982 and early 1983 under arts. XXII and XXIII of the GATT. During these consultations, the EC estimated that it was due \$250 million in compensation owing to the extension of the clause, but the United States maintained that the amount was \$7 million. Thus no agreement on compensation was reached.

On Apr. 20, 1983, the EC asked the GATT Council to establish a panel to determine the appropriate level of compensation due the EC. The panel proceedings may take 6 to 8 months, during which time the EC and the United States will have two opportunities to present information to the panel.

of printing and bookbinding machinery by countries in the Pacific Basin which would be indicative of increased capacity to produce and export printed matter. Although world imports of printing and bookbinding machinery increased from \$1.9 billion in 1977 to \$3.7 billion in 1980, the share of the market accounted for by Japan remained constant at 4 percent, and the shares accounted for by Hong Kong, the Republic of Korea, Taiwan, and Singapore each remained at about 1 percent or less.

The share of world exports of printed matter accounted for by Pacific Basin countries rose during 1977-81, from 5 percent to 6 percent. Japan's share of exports alone accounted for roughly 50 percent of this increase, rising from 2.6 percent in 1977 to 3.1 percent in 1981. The combined share of other Pacific Basin countries, all developing nations, rose slightly, remaining at about 3 percent. Total exports by the Pacific Basin countries between 1977 and 1981 increased by 80 percent. This was greater than the growth in total world exports (about 58 percent) but less than the growth in U.S. exports (over 90 percent).

The U.S. printing and publishing industry is generally competitive with the industries in all other world producers of printed matter in terms of production factor costs, with the exception of labor costs.

Plant costs, the costs of preparing a written work for printing, represent roughly 10 to 20 percent of manufacturing costs of an average book and include such activities as typesetting, stripping, and platemaking. The U.S. industry is recognized as a leader in the utilization of the most advanced and cost-efficient technology in this area (including computer-assisted composing equipment), which has reduced the required level of labor skills and attendant costs substantially.

Printing paper and cover materials made in the United States are widely agreed to be competitive in cost and quality with such materials produced anywhere else in the world. Printing paper generally accounts for 30 to 60 percent of book-manufacturing costs.

The technology and machinery used in printing and binding operations are fully transferable from one country to another. The United States is the world's leading producer of this type of equipment, and the U.S. printing and publishing industry has ready access to the most advanced and efficient equipment. Plant costs as a proportion of total book manufacturing costs are relatively small.

The labor costs of U.S. book manufacturers are those most likely to exceed foreign levels. European and Japanese compensation rates in the printing and publishing industry are 50 to 90 percent of U.S. compensation rates. Comparable rates in Hong Kong and Singapore are about 15 percent of U.S. wages. The direct labor costs involved in printing a book in the United States amount to 12 to 19 percent of total book-manufacturing costs.

The competitive advantage in labor costs enjoyed by Far Eastern manufacturers of printed matter are, for the average book, negated in the U.S. marketplace by transoceanic transportation and communication costs.

Transoceanic freight costs for shipping books from Far Eastern countries to the United States were found to range from 15 cents to 30 cents per book; thus, for an average book with the total manufacturing cost of \$1 in 1981, the shipping costs would negate the savings from the lower wage costs of printing overseas. Indeed, the shipping costs generally exceed total U.S. labor costs of 12 to 19 cents per book.

The great distance between Far Eastern manufacturers and the U.S. marketplace also constitutes a partial communications barrier for many book markets and, hence, an added cost. Personnel travel and telecommunications expenses are examples of direct costs. Less direct costs include those associated with the decreased flexibility, turnaround time, and quality control resulting from the great distances between publisher and printer.

Information gathered in the study indicates that the impact of the termination of the manufacturing clause on U.S. production and trade in printed matter would be relatively minor in terms of industry totals and would be concentrated in the book-manufacturing segment of the industry.

Books.--If the manufacturing clause were to be withdrawn, it is estimated that from 2 to 10 percent of the books that are currently printed in the United States would be printed abroad and imported; on the basis of 1982 sales, this equates to an estimated sales loss for the U.S. industry of \$50 million to \$260 million.

The major factors affecting the publisher's decision as to where to produce books are printing costs and publisher timing requirements. As stated above, the principal difference in printing costs in various countries is wages. Thus, the low wages in such countries as Hong Kong and Singapore is the primary advantage of overseas printing. However, because overseas transportation and communications costs tend to offset these labor cost advantages, only those books with higher than average labor costs would be printed overseas if the manufacturing clause should be terminated. Labor costs are the highest in short-run books with sewn bindings. Extensive color work also raises labor costs. College textbooks, professional books, and certain subscription reference books are examples of books with high labor costs. It is these books which make up 2 to 10 percent of the U.S. market.

U.S. book publishers would continue to perform certain tasks (e.g., editorial, sales, and distribution functions) in the United States even if the printing were done overseas due to their need to be in close proximity to the creators of the written materials and the U. S. marketplace. Thus, there would be no significant loss of publishing activities in the United States should the manufacturing clause be terminated.

U.S. exports of books and all other types of printed matter were not found to be directly affected by the existence of the manufacturing clause and hence would not be affected by its termination. The United States was the leading exporter of printed matter in 1981 and ranked high in all the major segments of this trade--first in books and pamphlets, second in newspapers and periodicals, and third in all other printed matter. The levels of U.S. exports reflect not the existence of the manufacturing clause, but rather the popularity of U.S. publishing houses and titles, the state-of-the-art quality and versatility of the U.S. printing industry, and the overall price competitiveness of the U.S. industry.

Newspapers and periodicals.--It is estimated that no measurable amount of domestically produced newspapers and periodicals would be printed overseas and imported should the manufacturing clause be terminated. ~~Timeliness~~ is a primary consideration regarding newspaper and periodical printing. Even for those few periodicals printed bimonthly or quarterly, for which timing is less important, it is estimated that the risks of printing abroad (such as strikes, difficulties in customs clearance, or printing errors by a foreign printer) are so great that no such overseas printing would be done. Because so few issues of such publications are printed annually, such risks could cause the loss of considerable revenue.

Catalogs and directories.--It is estimated that no measurable share of the domestically produced catalogs and directories would be printed overseas should the manufacturing clause be terminated. Most catalogs are predominantly pictorial and could be printed overseas regardless of the manufacturing clause. The fact that they are not is indicative of the lack of advantage in overseas printing. The largest class of directories is telephone directories, for which there is no significant economic benefit derived from copyright protection (nearly all copies are given away). These directories could be printed abroad if it were advantageous to do so. For directories other than telephone directories, the cost of printing involves the same cost elements as book printing. Hence, there appears to be economic incentive to print only those directories with high labor cost characteristics overseas. Such directories are believed to account for a negligible share of the U.S. output of directories.

Miscellaneous printed matter.--It is estimated that no significant part of domestically produced miscellaneous printed matter would be printed overseas should the manufacturing clause be withdrawn. Many of the products are not preponderantly literary, and others (e.g., manifold business forms) are generally printed without copyright claim; these products could be printed overseas without regard to the restrictions of the manufacturing clause. For such printed matter as legal and financial items, timing requirements generally necessitate local printing.

The costs of printing miscellaneous printed articles generally involve the same elements as book printing (e.g., plant, paper, labor, and transportation). The lack of significant foreign cost advantage is clearly indicated by the fact that domestic production currently supplies virtually all the consumption of the many types of printed matter that could be printed overseas regardless of the manufacturing clause. In 1982, imports supplied only \$356 million, or 0.5 percent of U.S. consumption of miscellaneous printed matter. Thus, the termination of the manufacturing clause would probably have no appreciable effect on imports of miscellaneous printed matter.

The displacement of U.S. production of printed matter by imports as a result of the termination of the manufacturing clause would result in the loss of 1,400 to 6,850 employment opportunities in the U.S. economy.

The loss of employment opportunities in the book-manufacturing segment of the U.S. printing and publishing industry is a direct reflection of the above-estimated loss of U.S. production of high-cost books to foreign manufacturers. It was derived from the U.S. Bureau of Labor Statistics input-output model of the U.S. economy. The employment opportunity loss would be distributed within the U.S. economy as follows: book-printing industry (39 percent or 550 to 2,650 jobs), other printing-related industries such as binding (13 percent or 180 to 880 jobs), paper products industry (5 percent or 75 to 370 jobs), and all other sectors (43 percent or 600 to 2,950 jobs).

It is estimated that the long-term effect of expiration of the manufacturing clause on conditions of competition between U.S. and foreign firms engaged in printing and related activities would be generally insignificant.

The major worldwide trend in printing is the substitution of computer-oriented and other labor-saving technology for labor-intensive technology. This trend has been underway since the 1960's and will continue whether or not the manufacturing clause is terminated. High-wage-rate countries, such as the United States, have been in the forefront of the development, adoption, and marketing of labor-saving technology. In the future, it is expected that firms in high-wage-rate countries will continue to have the most reason to adopt such technology.

The withdrawal of the manufacturing clause would be expected to increase competition between U.S. and foreign book manufacturing firms. In addition, there would probably be increased competition within the U.S. printing industry as U.S. book printers which lose production to foreign book producers diversified into other printing areas. Domestic book-manufacturing firms that produce a variety of types of books would be least affected if the manufacturing clause should be terminated. Those firms specializing in high-labor-cost types of books would face the most competition.

The initial market disruption that would occur if the manufacturing clause is terminated is expected to be evident only in the early years following its withdrawal. Over the long term, it is expected that the worldwide trend to replace labor with capital-intensive technology will continue, that the gap between U.S. and foreign wage rates will continue to narrow, and that the highly competitive, technologically advanced domestic book-manufacturing firms would regain most, if not all, of the market that they would initially lose as a result of the termination of the manufacturing clause.

TERMINATION OF THE MANUFACTURING CLAUSE:
AN ANALYSIS OF POTENTIAL EMPLOYMENT EFFECTS

A Report to the
Subcommittee on Patents, Copyrights and Trademarks
Committee on the Judiciary
United States Senate

Submitted by
Bureau of International Labor Affairs
U.S. Department of Labor

February 1986

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

February 26, 1986

The Honorable Charles McC. Mathias, Jr.
Chairman
Subcommittee on Patents,
Copyrights and Trademarks
United States Senate
Washington, D.C. 20510

Dear Mac:

Enclosed please find the just completed DOL report, "Termination of the Manufacturing Clause: An Analysis of Potential Employment Effects." The report has been prepared in response to your request, as Chairman of both the Joint Committee on Printing and the Subcommittee on Patents, Copyrights and Trademarks, that the Department review and update its 1981 study.

Chapter I of the report describes the structure of the domestic printing and publishing industries and reviews recent trends in indicators of industry performance, including value of shipments, employment, and foreign trade, as well as trends in productivity and technology. Chapter II analyzes certain factors--demand, relative input costs, timeliness, transportation costs--that are likely to influence the decision to produce printed matter domestically or abroad. Chapter III describes the approach used to estimate potential employment effects of the termination of the Manufacturing Clause and presents a set of estimates based on hypothetical output displacement scenarios which might occur absent the Clause. The report closes with some general conclusions on the potential employment effects of the termination of the Manufacturing Clause.

The basic methodology used in the report remains unchanged from that used in the Department's 1981 study. Essentially, an input-output (I-O) table and a set of labor-output ratios were used to translate the hypothesized decreases in final demand (via employment multipliers) into decreases in job opportunities.

There are, nonetheless, significant differences between the two studies regarding the estimated overall magnitude of job opportunity losses associated with termination of the Clause. These differences arise primarily from differing coverage assumptions, and more specifically the different assumptions concerning output displacement in the commercial printing sector. In the 1981 study, it was assumed that commercial printing would be directly, and significantly, affected by termination of the Clause. (In the 1981 study, commercial printing accounted for about 70 percent of the total direct job opportunity losses.) However, the bulk of the output of this sector is outside the scope of the Clause because it is not preponderantly literary or copyright is not claimed (e.g., copyright is not claimed on outputs such as bread wrappers, menus and the like, while items such as calendars, post cards, playing cards, and sheet music are not preponderantly literary). On the other hand, commercial printers do perform some printing for the sectors which produce outputs directly affected by the Manufacturing Clause (i.e., newspapers, periodicals, and books), and to the extent that these sectors utilize commercial printers, the commercial printing sector could be indirectly affected by the termination of the Manufacturing Clause. The current report assumes that the commercial printing sector would only be indirectly affected by termination of the Clause.

It should be noted that, for a variety of reasons discussed in the study, the ultimate employment effects of termination of the Manufacturing Clause can not be estimated with precision. Further, the study examines only the potential employment effects of termination of the Manufacturing Clause and it does not consider employment effects associated with its extension or possible retaliatory actions by foreign nations.

Very truly yours,


WILLIAM E. BROCK

EXECUTIVE SUMMARY

- o The Manufacturing Clause, which is part of the Copyright Act of 1976, provides a measure of protection from foreign competition for U.S. producers of certain printed materials. The Clause prohibits imports of preponderantly literary materials, in English, authored by U.S. citizens or domiciliaries, and containing U.S. copyrighted material, unless manufactured in the United States or in Canada.
- o Because the Manufacturing Clause has been in existence for over 90 years and has influenced the structure and development of the U.S. printing and publishing industries, the ultimate effects of termination of the Clause can not be estimated precisely.
- o The Manufacturing Clause generally applies directly only to outputs of four sectors of the printing and publishing industries: newspapers, periodicals, book publishing, and book printing. Outputs of other sectors are not believed to be directly affected, since they are primarily pictorial (e.g., greeting cards) or copyright is not claimed (e.g., manifold business forms).
- o There is little consensus about the portion of the output of the newspapers, periodicals, book publishing, and book printing sectors that would be susceptible to foreign production should the Clause be terminated. Any foreign production that results in displacement of U.S. production will affect U.S. employment in those industries and also in related supplier industries.
- o Four previous studies on the termination of the Clause have assumed the following percentages of domestic production would be displaced by imports in the sectors to which the Clause applies: Nordberg, 37 to 45 percent for books; CRS, 9.3 to 18.5 percent for books; United States International Trade Commission, 2 to 10 percent for books; 1981 Department of Labor, 0 to 2 percent for newspapers, 10 to 15 percent for periodicals, 30 to 45 percent for book publishing and book printing.
- o In view of the wide range of assumptions regarding output displacement, and the sensitivity of estimated employment effects to these assumptions, the approach adopted here is to analyze a series of hypothetical displacement scenarios based on assumptions regarding factors which influence production decisions (factor intensity, relative factor costs, timeliness, transportation costs).
- o This study examines only the potential employment effects

of termination of the Manufacturing Clause, and it does not consider employment effects associated with its extension or possible retaliatory actions by foreign nations.

- o It is estimated that if the Manufacturing Clause were terminated, total job opportunity losses for the printing and publishing industries as a whole under each of the hypothetical scenarios would be:

Scenario 1-- 900 job opportunity losses

Scenario 2-- 4,200 job opportunity losses

Scenario 3-- 11,500 job opportunity losses

Scenario 4-- 23,300 job opportunity losses

These estimates do not include any additional job opportunity losses which might occur outside of the printing and publishing sector. However, it is doubtful in the long term whether there would be an actual net employment loss economy wide associated with termination of the Clause, although the composition of U.S. output might change (i.e., some sectors might expand while others might contract).

- o These estimates range from less than 1 percent to less than 2 percent of actual 1982 employment levels in the printing and publishing industries. However, while the total job opportunity losses for the printing and publishing industries as a whole may not be significant, certain subsectors may be affected more adversely than others. Particularly, the book printing industry may face substantial adjustment problems as the four scenarios depict a potential job opportunity losses of from 2.5 to 25 percent of actual 1982 employment.
- o These job opportunity losses need to be interpreted carefully. They are subject to limitations which are discussed in the text. For example, estimated job opportunity losses do not necessarily translate into layoffs. This is especially the case for a relatively healthy sector of the economy, such as printing and publishing, which has been a major source of job creation among manufacturing industries. (The Bureau of Labor Statistics has projected a quite favorable employment outlook to 1995 for the periodical and book printing and publishing sector.)
- o When, and if, the Manufacturing Clause is terminated, there will be a period of adjustment following its termination. Growth in domestic demand, retirements, voluntary job transfers, and other changes, may all reduce the potential job losses. Indeed, in the presence of continued employment growth, none of the hypothetical scenarios may involve actual employment displacements.
- o Comparison of the results of this analysis with those of a 1981 Department of Labor study on the same topic reveals that most of the difference between the two sets of estimates are due to the assumption in the earlier study that output of the commercial printing industry would be directly, and significantly, affected by termination of the Clause. Direct job opportunity losses in the commercial printing sector accounted for nearly 70 percent of total direct job opportunity losses in the printing and publishing industries in the earlier study whereas no direct job opportunity losses are assumed to occur for commercial printing in the current study.
- o For the same assumed output displacement, estimates by the United States International Trade Commission of job opportunity losses associated with termination of the Clause, using methods similar to those used in this study, are consistent with those estimates presented here. This further illustrates the sensitivity of estimates to assumptions regarding coverage and output displacement.

Introduction

The Manufacturing Clause of the United States Copyright Law, which, in varying forms, has been in effect since 1891, provides a measure of protection from foreign competition for domestic producers of certain types of printed materials. In its current form, the Clause prohibits imports of copies of works preponderantly of nondramatic literary materials, in the English language, authored by U.S. citizens or domiciliaries, and of U.S. copyrighted material, unless manufactured in the United States or Canada.

The 1976 Copyright Act provided for the expiration of the Manufacturing Clause on July 1, 1982. On July 13, 1982, the Congress extended the Clause over a Presidential veto for a four-year period, or until July 1, 1986. At present, Congress is again considering the future of the Manufacturing Clause.

This report, which was requested by the Chairman of the Subcommittee on Patents, Copyrights and Trademarks, Committee on the Judiciary, analyzes the potential employment effects of termination of the Manufacturing Clause on the domestic printing and publishing industries and on the national economy.

Chapter I describes the structure of the domestic printing and publishing industries and reviews recent trends in indicators of industry performance, including value of shipments, employment, and foreign trade, as well as in productivity and technology. Chapter II analyzes certain factors--demand, relative input costs, timeliness, transportation costs--that are likely to influence the decision to produce printed matter domestically or abroad. Chapter III describes the approach used to estimate potential employment effects of the termination of the Manufacturing Clause and presents a set of estimates based on hypothetical output displacement scenarios which might occur absent the Clause. The report closes with some general conclusions on the potential employment effects of termination of the Manufacturing Clause.

I. The U.S. Printing and Publishing Industries

The printing and publishing, and allied industries, constitute major industrial group 27 of the Standard Industrial Classifica-

tion (SIC), the system used to gather statistics and analyze domestic economic activity in the United States.^{1/} This major industry group includes establishments engaged in printing by one or more of the common processes (e.g., letterpress, lithography, gravure, or screen) and those establishments which perform services for the printing trade (e.g., bookbinding, typesetting, engraving, photoengraving, and electrotyping). SIC 27 also includes establishments engaged in publishing newspapers, books, and periodicals, regardless of whether or not these establishments do their own printing.

Printing and publishing industries produce a wide variety of products for business, educational, scientific, and household consumption. For statistical purposes, economic activity in SIC 27 is further classified according into the following three- and four-digit SIC industries:

SIC 271-Newspapers: Establishments primarily engaged in publishing newspapers, or in printing and publishing newspapers. Their activities include various operations necessary for issuing newspapers, including the gathering of news and the preparation of editorials and advertisements, but may or may not include their own printing. Some commercial printing may be carried on by establishments in this industry.

SIC 272-Periodicals: Establishments primarily engaged in publishing periodicals, or in preparing, publishing, and printing periodicals. Their activities include various operations necessary for issuing periodicals, but may or may not include their own printing. Output of the industry includes comic books, magazines, periodicals, statistical reports, and trade journals.

SIC 2731-Book Publishing: Establishments primarily engaged in the publishing of books, regardless of whether they do their own printing. Among the functions carried out by book publishers are selection of manuscripts, preparation of manuscripts for typesetting, book manufacturing, marketing and publicity, orders, warehousing and shipping, and financing, accounting and housekeeping. Output of book publishers ranges from specialized books printed in very limited quantities to mass-market titles produced in large quantities, depending on the anticipated demand for the product. Based on the characteristics of the product and of the market to which it is directed, products of the book publishing industry are classified as: textbooks, technical-scientific-professional, religious, mass-market paperbacks, book club, mail order, trade (juvenile and adult), pamphlets, reference, and other.

SIC 2732-Book Printing: Establishments primarily engaged in printing only or in printing and binding books and pamphlets, but not engaged in publishing. Typically, book printers work closely with book publishers in the printing and binding functions. Book publishers decide the characteristics of the product, how many copies will be printed, and a time schedule and request bids from printers. Based on price, ability to meet time schedules, and other considerations, publishers select a printer to execute the order.

SIC 274-Miscellaneous Publishing: Establishments primarily engaged in miscellaneous publishing activities, not elsewhere

classified, whether or not engaged in printing. Output of the industry includes atlases, catalogs, directories, guides, maps, sheet or book music, race track programs, technical manuals and papers, and telephone directories.

SIC 275-Commercial Printing: Establishments primarily engaged in commercial, custom, or job printing by letterpress, screen, lithographic, engraving, or gravure process. The industry includes general printing shops as well as shops specializing in printing newspapers and periodicals for others. Output of the industry includes printed cellophane bags, bread wrappers, business forms, calendars, cards, catalogs, circulars, decalcomanias, directories, envelopes, gummed labels, magazines, maps, menus, sheet music, newspapers, periodicals, playing cards, post cards, posters, schedules, telephone directories, tickets, trading stamps, and stationery.

SIC 276-Manifold Business Forms: Establishments primarily engaged in designing and printing, by any process, special forms for use in the operation of a business, in single or multiple sets, including those with carbon or otherwise processed for multiple reproduction. Output of the industry includes register forms, office or business continuous forms, fanfold forms, sales books, and strip forms.

SIC 277-Greeting Card Publishing: Establishments primarily engaged in the designing, publishing, and printing, by any process, of greeting cards for all occasions. Output of this industry includes birthday, Christmas, Easter, and other greeting cards.

SIC 278-Blankbooks, Looseleaf Binders, and Bookbinding and Related Work: Establishments primarily engaged in manufacturing blankbooks, looseleaf devices, library binders, and ruled paper, or engaged in edition, trade, job, and library bookbinding and other services related to bookbinding.

SIC 279-Service Industries for the Printing Trade: Establishments primarily engaged in typesetting, photoengraving, preparing electrotypes, stereotype, and lithographic plates for the trade or use by others.

a) Shipments

In 1984, shipments by the printing and publishing industries were valued at \$103.1 billion (in current dollars), an increase of 11 percent over shipments of \$92.8 billion in 1983 (Table 1).^{2/} This compares with a rate of industry output growth of 8.2 percent in 1982-83. The Department of Commerce has estimated that shipments during 1985 will reach \$111.5 billion, an 8.2 percent increase over 1984. In 1982 constant dollars, the estimated real annual growth rates of industry output are 3.7 percent for 1982-83, 4.7 percent for 1983-84, and 2.9 percent for 1984-85 (Table 2). For 1986, the Department of Commerce has estimated a constant-dollar output growth rate of 3.4 percent.

Two sectors within the printing and publishing industries are dominant with respect to share of value of output: commercial printing (SIC 275) and newspapers (SIC 271). The share of the value of 1984 industry shipments accounted for by different sectors are:

Printing and Publishing: Percent Distribution of the
Value of Industry Shipments, 1984

<u>SIC Code</u>	<u>Description</u>	<u>Percent</u>
27	Printing and publishing	100.0
275	Commercial printing	31.1
271	Newspapers	25.1
272	Periodicals	13.7
2731	Book publishing	8.8
276	Manifold business forms	5.9
274	Miscellaneous publishing	3.2
2732	Book printing	2.7
277	Greeting cards publishing	2.5
2795	Lithographic services	1.4
27--*	Miscellaneous printing and publishing	5.6

*Includes SIC 2753--Engraving and plate printing; SIC 2782--Blankbooks and looseleaf binders; SIC 2789--Bookbinding; SIC 2791--Typesetting; SIC 2793--Photoengraving; SIC 2794--Electrotyping and stereotyping.

Source: Calculated from Table 1.

In recent years, periodicals, miscellaneous publishing, and greeting cards have tended to be the fastest growing sectors in terms of increases in their current value of shipments. These sectors, as well as book printing and commercial printing, have also done well in terms of rates of growth in the real value of shipments.

According to Department of Commerce projections, the fastest growing sectors in 1986 (in terms of shipments valued in 1982 dollars) will be greeting cards (5 percent growth), commercial printing (4.5 percent), miscellaneous publishing (4.4 percent), miscellaneous printing and publishing (4.1 percent), and lithographic services (4 percent). The real value of shipments of newspapers and periodicals is projected to grow at the slower rate of 2 percent in 1986.

b) Employment

With total employment of 1.4 million persons in 1984, printing and publishing industries are one of the ten largest employers in the manufacturing sector, accounting for over 7 percent of all manufacturing employment and for over 17 percent of nondurable manufacturing employment (Table 3).

Notwithstanding some periods of stagnation corresponding to economy-wide recessions, printing and publishing employment grew between 1960 and 1981 at an average annual rate of 1.5 percent. In the ten-year period 1973-82, printing and publishing added

about 160,000 jobs and an additional 100,000 jobs were created from 1982 to 1984. Most of these new jobs were created in the newspaper, miscellaneous publishing, and commercial printing sectors of the industry. Printing and publishing employment grew by 2.1 percent in 1983 and by 5.7 percent in 1984. Preliminary data for 1985 suggest that employment increased by nearly 3.6 percent in that year.

In contrast to the steady growth in overall employment, production worker employment in printing and publishing was stagnant during the period 1979-82; production worker employment rose by 1.8 percent in 1983, by 6.2 percent in 1984, and by an estimated 3.7 percent in 1985 (Table 4). Production worker employment in newspapers, book printing, and manifold business forms declined during the period 1979-82, partly as a result of labor-saving technological changes in the industry (see section I.e below). Production worker employment in newspapers has recovered slightly since 1983, but in all three industries, the 1984 levels of production worker employment were below those in 1979. Commercial printing was the only sector of the printing and publishing industries to record a steady gain in the employment of production workers over the period 1979-84.

Compared to all manufacturing industries, or to the subset of manufacturing industries producing nondurable goods, the printing and publishing industries tend to use significantly lower proportions of production workers relative to total employees. For example, over the period 1979-85, the ratio of production workers to total employment ranged from 71.6 to 67.8 percent for all manufacturing industries, from 72.0 to 70.2 percent for nondurable goods manufacturing industries, and from 56.4 to 54.8 percent for all printing and publishing industries (Table 5). Within the printing and publishing industries, periodicals had the lowest proportion of production workers to all employees (17-25 percent), while book printing (80-85 percent) and blankbooks and bookbinding (80-83 percent) had the highest.

Within the printing and publishing industries, employment is concentrated in the commercial printing and newspaper sectors which combined account for about two thirds of total employment in

1984. These two sectors were also responsible for about two-thirds of employment of production workers in the industries. Employment shares in 1984 were:

Printing and Publishing: Percent Distribution
of Industry Employment, 1984

SIC Code	Description	All Employees (Percent)	Production Workers (Percent)
27	Printing and publishing	100.0	100.0
275	Commercial printing	34.1	45.3
271	Newspapers	32.1	22.0
272	Periodicals	7.8	3.2
2731	Book publishing	5.6	3.8
278	Blankbooks and bookbinding	5.0	7.4
274	Miscellaneous publishing	4.8	4.7
279	Printing trade services	3.5	4.7
276	Manifold business forms	3.5	4.4
2732	Book printing	1.9	2.8
277	Greeting card publishing	1.8	1.7

Source: Calculated from Tables 3 and 4.

The distribution of total employment differs from that of production workers because of differences across sectors in the intensity with which production workers are used. In 1984, for example, over 80 percent of total employment in book printing and in blankbooks and bookbinding corresponded to production workers (Table 5). At the other extreme, in that same year, production workers comprised only 22.9 percent of employment in periodicals, 37.7 percent in newspapers, and 38.0 percent in book publishing. The relatively low share of production workers in newspapers, periodicals, and book publishing reflects substantial employment in publishing (as opposed to printing) operations.

c) Foreign trade

Despite the overall U.S. merchandise trade deficit, the U.S. printing and publishing industries have maintained favorable trade balances. In 1984, exports of printed matter exceeded imports by \$308 million,^{3/} a smaller trade surplus than in previous years (e.g., \$528 million surplus in 1983, \$686 million in 1982), but still significant when compared to the overall manufactured goods trade deficit of \$84.4 billion. Data in Tables 6 and 7 show that periodicals (SIC 272) and books and pamphlets (SIC 273) are the sectors which have made the largest contribution to these trade surpluses.

In 1984, products of the printing and publishing industries

accounted for 0.8 percent of the value of U.S. manufactures exports, while imports of these products accounted for 0.4 percent of total U.S. imports, reflecting the relatively minor role (in value terms) that printed matter plays in U.S. international trade.

U.S. imports and exports of printed matter are also small when compared to domestic production. Imports of printing and publishing products account for approximately one percent of the industry's new supply (value of domestic product shipments plus imports), while exports account for about 1.5 percent of product shipments. These import penetration and export proportion ratios have remained fairly stable over the past 15 years. Only three sectors of printing and publishing had import penetration ratios above one percentage point in 1985: books (SIC 273), 5.2 percent; miscellaneous publishing (SIC 241), 1.2 percent; and blankbooks and bookbinding (SIC 278), 3.2 percent.^{4/} The periodicals and book-producing sectors were the only ones which exported more than one percent of their shipments in 1985, 3.0 and 6.9 percent, respectively.

d) Labor productivity

Labor productivity measures in Table 8, developed by the Bureau of Labor Statistics (BLS), show the average rate of change over time in real output of the printing and publishing industries per hour of labor input. These measures are unpublished and unofficial BLS estimates. Changes in the measures reflect the joint effect of a number of interrelated factors such as technology, capital investment, scale of production, capacity utilization, and managerial and worker skill and effort. For purpose of comparison, similar measures which show the change in output per hour of all persons in the nonfarm business, all manufacturing, and nondurable goods manufacturing sectors are also presented in Table 8.

All of the printing and publishing sectors recorded average annual increases in labor productivity (output per employee hour) over the long term (1958-82). These average annual increases ranged from a high of 4.3 percent for greeting card publishing to a low of 0.2 percent for miscellaneous publishing. Seven of the ten sectors within SIC 27, as well as SIC 27 as a whole, recorded

lower or negligible average annual productivity gains in the more recent 1973-82 period compared to the earlier 1958-73 period. This mirrors the productivity growth record of the nonfarm business economy as a whole, as well as that of the all manufacturing and nondurable goods manufacturing sectors.

The three exceptions to the 1973-82 slowdown in productivity growth were periodicals, and to a much lesser extent, book printing and miscellaneous publishing. For periodicals, this was due in large part to the substantial growth in output during the recent period compared to the earlier one--6.2 percent a year during 1973-82 as opposed to 2.9 percent in 1958-73. Over the 1958-82 period, the rates of productivity growth in five sectors (periodicals; commercial printing; manifold business forms; greeting cards; blankbooks and bookbinding) equaled or exceeded the 1.7 percent annual growth rate recorded by the nonfarm business sector.

e) Technology

Technological changes are taking place in all sectors of printing and publishing.^{5/} Changes have been particularly rapid in composition and typesetting. The widespread use of computers for typesetting, video display terminals for editing, optical character recognition scanners for typesetting, and phototypesetting machines, has resulted in electronic composition systems with tremendous flexibility and capacity.

In some cases, these applications are having an impact on the skill requirements and employment for typesetters (about 40 percent of all printing industry craft workers), editors, reporters, other professionals, and clerical workers. A major effect of electronic composition is to shift activity from previously time-consuming, labor-intensive activities in composing rooms to computer-based photocomposition requiring fewer skilled craft workers. Electronic typesetting technology, with its use of typewriter-style keyboards and the shift of many typesetting operations from composing room to the front office, is responsible, in part, for a gain of over 100 percent since 1960 in employment of women in the printing and publishing industries. In 1984, women employees accounted for over 50 percent of total

employment in periodicals, book publishing and printing, miscellaneous publishing, and blankbooks and bookbinding, and outnumbered production workers in the newspapers, periodicals, book publishing and printing, and miscellaneous publishing sectors of printing and publishing.^{6/}

In other sectors of printing and publishing, electronic or optical scanners are being applied to color printing, thereby eliminating much of the time-consuming handwork required in manual color separation processes. High-speed electronic data transmission systems (words, photos, etc.) have been linked with automatic scanning and platemaking equipment for rapid, highly-automated transmission of typeset material to printing plants at other locations. Web offset (continuous roll of paper) printing has increasingly replaced both web letter press and sheet-fed offset printing; this process is being used by virtually all weekly and smaller daily newspapers, a growing number of larger daily newspapers, and more widely by book, periodical, and commercial printers. This has resulted in increased demand for lithographic craft workers and decreased demand for workers in some letterpress occupations, such as printing plate preparation. Improvements in binding and newspaper mailroom technology have also reduced labor requirements in material handling and assembly tasks. Computerized inventory and distribution systems have increased the speed with which books and periodicals can be distributed, returned, and credited.

The introduction of these labor-saving and more efficient technologies has generated some worker displacements, notwithstanding overall growth. A portion of the workers displaced by new technologies are being retrained and reassigned. Printers in unionized plants have provisions protecting them from displacement by technological changes in their collective bargaining agreements. Reductions in employment due to technological change have, to some extent, been absorbed through attrition and retraining.^{7/} The new printing technologies have contributed to gains in industry productivity although the extent of this impact cannot be measured precisely.

II. Selected Factors Affecting Production Decisions

Decisions by U.S. publishing and printing firms on what to produce, how to produce, and where, depend on many factors. To a large extent, the output mix is determined by domestic and foreign demand--domestic demand, in turn, responds to a host of U.S. demographic and economic factors such as population growth, household formation, school enrollments, growth in business activity, increases in advertising, etc., while foreign demand depends on demographic and economic developments abroad, the relative value of currencies, etc. The ability of domestic producers to sell their products abroad is also affected by the extent to which U.S. products are permitted to compete in specific foreign markets.

For a given level of demand, profit-maximizing U.S. firms must make the joint determination of how to produce the output demanded and where to produce it, including whether the product should be produced domestically or abroad. How to produce the output--the optimal mix of inputs--rests on the relative costs of inputs as well as on technological and institutional constraints. In the absence of legal constraints, the decision on where to produce is based on the relative costs of producing at a particular location weighted against the need for timeliness, benefits to be gained from closeness to the market, transportation costs, etc. Producers simultaneously determine how and where to produce the output demanded based on relative input prices at each location and these other factors.

a) Demand

Demand for outputs of the publishing and printing industries depends on a host of demographic and economic factors. Demographic factors include population growth, household formations, school enrollments, and increases in educational attainment. Economic factors include levels of disposable income, the level and growth of business activity, growth in the number of business establishments, and growth in advertising.^{8/}

b) Inputs and costs

The printing and publishing industries use a mix of labor, materials, and equipment to produce their various products. The

proportions with which these inputs are used vary widely among different segments of the industry and the particular products being produced.

According to data from the 1982 Census of Manufactures, the cost of materials in 1982 accounted for 36.6 percent of the value of shipments by the U.S. printing and publishing industries (Table 9), payroll costs (i.e., payments to all employees) for 26.4 percent, and wages (i.e., payments to production workers) for 13.2 percent. The ratio of materials plus payroll costs to the value of industry shipments in 1982 was 63, a ratio which has remained quite stable over recent years.

The range of variation in input mix across printing and publishing sectors can be gleaned from Table 9. Certain sectors such as book printing and commercial printing, use materials and labor quite intensively (over 70 percent of value of their shipments); others, such as book publishing and greeting cards publishing, rely on these inputs to a much lesser extent (under 50 percent.)

Within a given sector, factor mix also varies depending on the particular output and the size of the production run. For example, in book printing, multi-colored, heavily illustrated, hardbound books tend to be more labor intensive than their single-color, text, softbound counterparts. Because many of the pre-printing and set up activities, which tend to be labor intensive, have to be carried out without regard to the number of copies which are produced, there is a tendency for labor requirements per unit of output to vary inversely with the size of the production run. This phenomenon is illustrated in Table 10, which reproduces the results of an industry survey conducted by the United States International Trade Commission (USITC).^{9/} In that survey, the USITC sought to investigate the relation between unit paper, unit labor, and total costs for three prototype books, as a function of the number of copies printed. With regard to all three prototype books, the data submitted by respondents indicated clearly that the longer the print run, the lower the unit labor cost and the lower the labor cost as a percentage of total cost.

1) Labor costs: Hourly earnings of production workers in the

U.S. printing and publishing industries tend to be slightly higher (2-3 percent) than the average for all manufacturing workers and markedly higher (10-15 percent) than the average for workers in nondurable goods manufacturing industries (Table 11). Earnings of workers in certain sectors, e.g., printing trade services, are significantly higher than the average for all printing and publishing industries, probably reflecting the highly-skilled type of work involved. Workers in the newspaper industry received a wage premium (relative to the average for all the printing and publishing industries) of about five percent in 1979; this premium has tended to disappear over time, probably as a result of technological changes which have tended to reduce the proportion of highly skilled workers in the newspaper industry.

Some sectors, such as printing trade services (which are comprised of typesetting, photoengraving, electrotyping and stereotyping, and lithographic platemaking services), are very labor intensive, with payroll costs accounting for nearly 42.6 percent of the value of shipments (Table 9). Other sectors with high labor intensity, as measured by the share of payroll costs to value of shipments, are: blankbooks and bookbinding (32.2 percent); book printing (31.9 percent); newspapers (30.8 percent); and commercial printing (29.2 percent).

Regarding the type of labor inputs, it is clear from Table 5 that employment of production workers is concentrated in the printing, rather than publishing, sectors. Thus, around 70 percent of total payroll costs in book printing, commercial printing, manifold business forms, blankbooks and bookbinding, and printing trade services, is associated with compensation of production workers, while the corresponding percentages for other publishing-oriented sectors are much lower (e.g., 12 percent for periodicals and 18 percent for book publishing).

In 1984, production workers in the printing and publishing industries had average hourly earnings of \$9.40, 3.2 percent higher than in 1983 (Table 11). Over the period 1979-84, nominal hourly earnings of these production workers have grown at roughly the same rate as the average for workers in all manufacturing.

Examination of a more comprehensive measure of labor cost, compensation per employee hour (which takes into account not only wages and salaries but also other employee fringe benefits), suggests that labor cost increases in the printing and publishing industries have lagged behind, or kept pace with, the increases in the nonfarm business sector, the all manufacturing sector, or the nondurable manufacturing sector (Table 12). Thus, over the period 1967-82, compensation per employee hour in the printing and publishing industries grew at an average annual rate of 7.1 percent, compared to an annual rate of growth of 8.3 percent for the nonfarm business sector, 8.5 percent for the all manufacturing sector, and 8.4 percent for the nondurable manufacturing sector. The same pattern prevailed during the more recent period of 1973-82; during 1967-73, compensation per employee hour for printing and publishing workers grew at the same pace as for the nonfarm business sector and slightly faster than for all manufacturing and nondurable manufacturing.

The pattern of slower or negligible growth in labor costs in the printing and publishing industries compared to the three broader sectors also emerges if data on real compensation per employee hour are analyzed. As shown in the middle panel of Table 12, over the period 1967-82, compensation per employee hour for printing and publishing workers adjusted for inflation actually contracted at a rate of 0.4 percent per annum, compared to annual growth rates of 0.8 percent for the nonfarm business sector, 1.0 percent for all manufacturing and 0.9 percent for nondurable manufacturing.

Unit labor costs (Table 12), which reflect changes both in labor productivity and hourly compensation, rose at an average annual rate of 5.9 percent for the printing and publishing industries during 1967-82, a slower rate of growth than recorded by the nonfarm business sector (7.3 percent) or all manufacturing (6.2 percent), but slightly faster than for nondurable manufacturing. During the more recent period of 1973-82, unit labor costs in printing and publishing grew at an average annual rate of 6.6 percent, a considerably slower pace than for the three broader sectors of the U.S. economy.

2) International comparisons of labor costs: Table 13 presents BLS estimates of hourly compensation rates (wages plus employer contributions into funds for the benefit of workers) for production workers in the printing and publishing industries in 20 countries, including the United States.^{10/} The compensation rates are given in terms of national currencies and in U.S. dollars (converted by means of official exchange rates) in order to permit comparisons. Data are not available to adjust these measures for quality or efficiency.

The rightmost column in Table 13 indicates that, in 1982, labor costs for U.S. printing and publishing workers were roughly equivalent to those for workers in Sweden, the Federal Republic of Germany, and Denmark, and lower (by 17 percent) than for workers in Switzerland. U.S. labor costs were approximately 10-20 percent higher than in some other developed countries (e.g., Belgium, Canada, France, Netherlands, United Kingdom) but considerably higher than in Japan and in developing countries. Labor compensation rates in Japan were 54 percent of U.S. rates; Israel, 39 percent; Singapore and Hong Kong, 18 percent; Korea, 16 percent; and Taiwan, 11 percent.

It should be noted, however, that international labor cost comparisons, in which labor costs in domestic currencies are converted into a common currency (in this case U.S. dollars), are heavily affected by fluctuations in exchange rates. In recent years, the very high value of the dollar in relation to other currencies has had a tendency to depress the dollar value of foreign labor costs and skew the comparisons.

For example, according to BLS estimates (Table 14), in 1979 West German production workers in printing and publishing were compensated at an average hourly rate, in U.S. dollar terms, which exceeded the compensation rate of their U.S. counterparts by 37 percent (i.e., the West German compensation rate in 1979 had an index value of 137 compared to an index value of 100 for the United States in that year). Since 1979, hourly compensation of West German printing and publishing workers in U.S. dollar terms has declined steadily, so that by 1984, West German workers were

being compensated at a rate which was merely 82 percent of the compensation rate for U.S. workers.

During this period, however, compensation rates of West German workers in domestic currency rose by 29 percent (from 22.32 to 28.69 deutsche marks per hour), compared to a 38 percent increase (from \$8.90 to \$12.26 per hour) for U.S. workers. Also over this period, the value of the U.S. dollar vis-a-vis the deutsche mark appreciated by 55 percent. The combined result of the slightly faster rate of increase in U.S. labor costs compared to those in West Germany coupled with the severe change in the value of the U.S. dollar relative to the deutsche mark was to drive up U.S. labor costs relative to West German costs in dollar terms.

This same phenomenon explains, to a large extent, the substantial decline in recent years in compensation of production workers in printing and publishing in Belgium, Denmark, France, the United Kingdom, etc., in U.S. dollar terms, relative to their U.S. counterparts. Over the period 1979-84, the U.S. dollar appreciated by 97.0 percent against the Belgian franc and the Danish krone, 105.3 percent against the French franc, and 59.2 percent against the British pound.^{11/} Using a broader measure of exchange rate changes, the average value of the U.S. dollar against the currencies of the fourteen industrial countries rose by 30.1 percent between 1979 and 1984.^{12/} However, the recent fall in the dollar, particularly against the Japanese yen, could alter the comparisons presented here.

3) Paper and materials costs: Table 9 presents the total cost of materials for all printing and publishing industries. These costs refer to the direct charges actually paid or payable for items consumed (including fuel consumed), or put into production, during the year, including freight charges and other direct charges incurred by establishments in acquiring these materials. The main components of these costs are:

- o raw materials, semifinished goods, parts, components, and supplies put into production, or used as operating supplies or for repair or maintenance during the year;
- o electric energy purchased;
- o fuels consumed for heat, power, or generation of electricity;

- o work done by others on materials or parts furnished by manufacturing establishments (i.e., contract work); and
- o products bought and resold in the same condition.

In addition to the total cost of materials, the 1982 Census of Manufactures provides information on the consumption of major materials used in manufacturing. These data reveal which materials constitute the leading costs of production for a particular industry. The following table presents the delivered cost, in millions of dollars, of major materials consumed, or put into production, by establishments in the newspaper, periodical, book publishing, and book printing industries in 1982:

Item	Newspapers	Periodicals	Book Publishing	Book Printing
Paper	3,661.3	756.0	354.9	342.9
Ink	115.6	27.2	9.0	26.1
Plates	150.9	3.2	11.0	44.6
Binding	--	--	--	80.6
Other	1,265.2	1,010.3	307.0	321.6
Total	5,193.0	1,796.7	681.9	815.8

Based on these data, it is clear that paper costs constitute, by far, the major material cost of production in the newspapers (71 percent), periodicals (42 percent), book publishing (52 percent), and book printing (42 percent) industries. Paper costs exceed payments to production workers (i.e., wages in Table 9) in the newspapers, periodicals, and book publishing industries, but not in the book printing industry. However, materials costs exceed wage costs for all four of these industries.

The relative costs of printing papers depend primarily on type, quality, and availability. Lower quality paper (i.e., newsprint) constitutes the major share of the paper costs for newspapers, while for periodicals and books, the major share of paper costs is for higher quality coated and uncoated papers.

The United States is the world's leading producer of printing and writing papers. U.S. paper exports have consistently been less than imports; however, historically, imports have provided only a small share of total U.S. consumption.^{13/} U.S. imports of paper and paper products have generally been restricted to low-priced primary products, such as woodpulp and newsprint. Since the emergence of the

strong U.S. dollar and a closer supply/demand balance in the domestic paper industry, higher valued uncoated and coated printing papers supplied by foreign competitors have been gaining share in the U.S. market. The U.S. paper industry has traditionally run a trade deficit, but in 1985, with lower exports and increased imports, the paper industry's trade deficit rose by 8 percent, to \$3.7 billion.^{14/}

c) Timeliness

For several sectors of the printing and publishing industries, particularly those producing newspapers and periodicals, timeliness of the output is a prime factor behind the decision where to produce. Timeliness is especially important in the case of daily newspapers, which must be prepared, printed, and distributed the next day. Because of the need for timely news and advertising, it is unlikely that daily newspapers would be printed abroad, although some weekly newspapers might be.

In 1984, there were 9,151 newspapers in the United States, distributed according to frequency of publication as follows^{15/}:

<u>Frequency</u>	<u>Number</u>	<u>Percent</u>
Total	9,151	100.0
Daily	1,687	18.4
Triweekly	75	0.8
Semiweekly	525	5.7
Weekly	6,798	74.3
Other	66	0.7

Despite accounting for 18.4 percent of the total number of newspapers, daily newspapers are responsible for the vast majority of newspaper industry shipments. For example, in 1982, the most recent year for which these data are available, the Bureau of the Census estimated that daily newspapers accounted for 84.5 percent of the value of newspaper industry shipments.^{16/} In contrast, weekly newspapers, which accounted for 74.3 percent of the total number of newspapers in 1984, contributed only 7.6 percent of the value of industry shipments.

Official trade statistics indicate that Canada was the major supplier of U.S. imports of newspapers, accounting for 97 percent of the value of such imports in the last five years. U.S. imports

of newspapers from Canada amounted to \$82 million in 1984. These newspapers imports appear to be primarily composed of weekly newspapers^{17/} and newspaper inserts; the common language in the two nations, the proximity of Canadian producers, and the ability to ship in truck-load quantities to marketing areas in the United States, permits the sale in the United States of weekly tabloids printed in Canada and the use in U.S. newspapers of inserts printed in Canada.

Timeliness is also an important consideration in the production of periodicals. In 1984, there were 10,809 periodical publications in the United States, distributed according to frequency of publication, as follows:^{18/}

<u>Frequency</u>	<u>Number</u>	<u>Percent</u>
Total	10,809	100.0
Daily	182	1.7
Weekly	1,376	12.7
Monthly	4,096	37.9
Bimonthly	1,348	12.5
Quarterly	1,711	15.8
Other	2,096	19.4

Periodicals do not face the same timeliness constraint as newspapers with regard to their news content; however, weekly or monthly publications face advertising deadlines which generally allow for little advance time for distant printing. It is also common for news and advertising to be inserted and withdrawn very close to production time.^{19/} Bimonthly and quarterly periodicals, such as academic journals, are likely to be less susceptible to timeliness constraints and to last-minute changes in advertising, and may be more suited for publication abroad.

d) Transportation costs

The bulkiness of the outputs of the printing and publishing industries tends to make them expensive to transport. High transportation costs relative to market value of final product argue for producing close to the market; when high transportation costs are coupled with timeliness constraints (including the ability to turn around work quickly and to react promptly to changes) they explain why U.S. printing and publishing establishments are geographically dispersed.

Printing and publishing establishments are small and distributed throughout the nation. In 1982, the most recent year

for which detailed data are available, the printing and publishing industries were composed of 53,308 establishments, of which nearly 80 percent had fewer than 20 employees. For all manufacturing, 65 percent of establishments employed less than 20 workers.^{20/} In that same year, the average printing and publishing establishment employed 24 workers, compared to an average of 54 persons for all manufacturing.

Establishments producing newspapers and periodicals and those engaged in commercial and miscellaneous printing are also well distributed geographically.^{21/} While publishing establishments are also dispersed, there is a tendency for certain areas of the nation (e.g., the Northeast and California) to account for a disproportionate percentage of the value of shipments.

For printed materials produced abroad, transportation costs (broadly defined to include shipping costs and those associated with special export packing, customs clearance, etc.) can be significant. Information obtained by the USITC indicates that for books which have to be shipped across the ocean (e.g., those printed in Pacific Basin nations), shipping and customs clearance costs amounted to about 15 to 30 cents per book. Considering that the average cost of manufacturing a book domestically was approximately \$1 (in 1981), the USITC concluded that in order for manufacture to move abroad, the cost savings would have to be greater than 15 to 30 percent of U.S. costs to make up for the higher transportation expense.^{22/} Based on foreign trade data from the Department of Commerce, it has been estimated that ocean shipping costs add 9.6 percent to the price of books imported into the United States from Japan and 7 percent to the price of books imported from Singapore.^{23/} While transportation costs from contiguous countries (Canada, Mexico) to certain U.S. markets may not be significantly different than from points within the United States, transport costs from distant nations (e.g., Pacific Basin countries) may be a barrier to imports.

Another transportation-related cost is the additional amount of time involved in overseas compared to domestic printing. Again, according to the USITC survey, transoceanic shipping takes about 1 month. Additional time is also required for sending

overseas proofs and other editorial materials.^{24/} To be sure, air transportation would reduce time delays in transporting printed matter from far away nations, but would increase transportation costs substantially.

III. The Manufacturing Clause

The Manufacturing Clause of the United States Copyright Law which, in varying forms, has been in effect since 1891, provides a measure of protection from foreign competition for U.S. producers of certain types of copyrighted printed materials. The current Manufacturing Clause, which is embodied in Section 601 of the 1976 Copyright Act (P.L. 94-553), prohibits imports, with certain exceptions,^{25/} of copies of works:

- (1) preponderantly of nondramatic literary material;
- (2) in the English language;
- (3) authored by U.S. nationals or domiciliaries; and
- (4) of U.S. copyrighted material

unless manufactured in the United States or Canada.^{26/} Among the manufacturing processes which must be performed in the United States or Canada are typesetting of raised-surface type, platemaking, printing, and bookbinding. Works covered by the Clause include novels, textbooks, periodicals, newspapers, catalogues, directories, etc., where the printed text is at least 50 percent of total page area, excluding margins.^{27/} Materials such as dramatic, musical, foreign language or multilingual works, or those heavily illustrated, are not subject to the Clause.

The 1976 Copyright Act provided that Section 601 (the Manufacturing Clause) would expire on July 1, 1982. On July 13, 1982, Congress extended the effective date of the Clause over a Presidential veto for four years, or until July 1, 1986. Currently, the 99th Congress is considering several legislative proposals which would amend the existing Clause. For example, S.1938 would extend the Manufacturing Clause, in its present form, indefinitely. Another legislative proposal, S.1822, the "Manufacture and Public Distribution of Certain Copyrighted Material Act," would extend the Clause indefinitely and amend its scope by expanding its product coverage.^{28/}

The current study examines only the potential employment effects of termination of the Manufacturing Clause. The potential employment effects associated with the possible extension, in one form or another, of the Manufacturing Clause and possible retaliatory actions by foreign nations affected by it are not considered here.

a) Sector Coverage

The Manufacturing Clause applies only to works consisting primarily of printed text, in English language, by U.S. authors or domiciliaries, and U.S. copyrighted. It generally applies directly to the output of only four sectors within the printing and publishing industries: newspapers (SIC 271), periodicals (SIC 272), book publishing (SIC 2731), and book printing (SIC 2732). The bulk of the output of the other sectors of the printing and publishing industries (see Table 1) tends to be outside of the scope of the Clause for the following reasons:^{29/}

SIC 274-Miscellaneous publishing: Outputs such as atlases, maps, catalogs, etc., are excluded because they are preponderantly pictorial; others, such as telephone directories, are excluded because they are not generally copyrighted.

SIC 275-Commercial printing: Certain outputs such as bread wrappers, menus, etc., are excluded because copyright is not claimed; others, such as calendars, post cards, playing cards, sheet music, etc., are excluded because they are not literary. Commercial printing establishments which produce newspapers, periodicals, or books under contract may be indirectly affected by the termination of the Manufacturing Clause; these indirect effects are discussed below.

SIC 276-Manifold business forms: Excluded because copyright is not claimed on outputs.

SIC 277-Greeting cards: Excluded because output is predominantly pictorial.

SIC 278-Blankbooks, looseleaf binders, and bookbinding and related work: Outputs such as blankbooks, looseleaf devices, etc., are excluded because copyright is generally not claimed; regarding bookbinding services, there may be some indirect impact from termination of the Clause.

SIC 279-Service industries for the printing trade: Since these are service industries, they will not be directly affected by termination of the Clause; to the extent that the output of other industries which employ their services is affected, there will be an indirect impact.

b) Susceptibility to foreign production

While there is agreement on the sectors of the printing and publishing industries to which the Manufacturing Clause requirements apply, there is little consensus about the portion of

the output of these sectors which might be susceptible to foreign production should the Clause be terminated.

Four major studies of the economic effects of terminating the Manufacturing Clause, by Nordberg,^{30/} Moore for the Department of Labor (DOL),^{31/} the Congressional Research Service (CRS),^{32/} and the USITC,^{33/} are all based on different assumptions regarding the extent of shifts abroad in the production of newspapers, periodicals, and books.

SIC 271-Newspapers and SIC 272-Periodicals: With regard to newspapers and periodicals, it has been argued by some that these products are very time-sensitive and therefore not susceptible to foreign production. Thus, Nordberg and CRS do not consider them in their analyses. The USITC study did analyze, in some detail, the potential for foreign production of newspapers and periodicals but concluded that the time-sensitivity factor was so important that "there would be no measurable effect on imports or exports of these items if the manufacturing clause were withdrawn."^{34/}

The 1981 DOL study assumed that up to 2 percent of the output of the newspaper industry and 10-15 percent of that of the periodicals industry would be displaced by foreign-produced printed matter were the Manufacturing Clause terminated.^{35/} In a critical review of that study, the Register of Copyrights pointed out that newspapers "are too time sensitive to go abroad even at the 2 percent high range prediction" and that periodicals "are far too time sensitive to permit ocean transport from the Pacific Basin of anything like 15 percent of present output."^{36/}

SIC 2731-Book publishing and SIC 2732-Book printing: While all four of the studies mentioned above agree in their assessment that certain books currently produced in the United States under the protection of the Manufacturing Clause are susceptible to foreign production should the Clause terminate, there is substantial disagreement on the portion of output of the book publishing and printing sectors which would be thus affected.

The relative importance of each type of book shipped by the book printing and book publishing sectors in 1982, based on percentage share of total product shipments from the 1982 Census of Manufactures, was:

	<u>Book Publishing</u>	<u>Book Printing</u>
Total	100.0	100.0
Textbooks	27.7	13.4
Technical, scientific, professional	17.4	11.6
Religious	4.1	4.3
Mass market paperback	7.1	NA
Book club	5.3	NA
Mail order	6.5	NA
Adult trade and juvenile	14.2	NA
General reference	3.8	NA
Pamphlets	1.0	8.0
General	NA	24.6
Other	12.8	38.1

Based primarily on a study of domestic and world printing and publishing costs, Nordberg concluded that "45 percent of the U.S. market for book manufacturing could be competitively served by foreign producers given existing [1977] currency parities, wage rates, equipment base and technology."^{37/} Principal sources of the imports were expected to be the Far East (37 percent) and Europe (8 percent). With regard to specific types of books, Nordberg estimated that should the Manufacturing Clause be terminated, foreign competition could take the following market shares:^{38/}

<u>Type of Book</u>	<u>Potential Import Market Share</u>
Trade, hard bound	20
Subscription reference	100
Professional, hard bound	100
Professional, soft bound	100
Mass market, paper bound	100
College, hard bound	100

According to Nordberg, best seller trade books and elementary and high school textbooks would be least susceptible to foreign production. Regarding best sellers, Nordberg reasoned that because quick turn-around for reprints is needed, they would generally not be risked to foreign production. For elementary and high school texts, he reasoned that political considerations related to State adoptions would maintain most of their production within the United States.

Subsequently, Nordberg revised down the "potential exposure" of the domestic market to books printed in the Far East to 30 percent (from 37 percent) to take into account Far Eastern pricing practices and the decline in the value of the U.S. dollar (in 1978) against some foreign currencies, particularly against the

Japanese yen. He did not provide revised estimates of potential import market shares, by type of book, which would be consistent with the lower anticipated overall import share. Presumably, if such adjustments were made, the potential import market shares would be lower than those given in the text table for trade, professional (both hard bound and soft bound), and mass market paperback books; these are the types of books which Nordberg found to be susceptible to increased imports from the Far East.^{39/} CRS adjusted the original Nordberg estimates by book type to obtain a potential import market share of 10.6 for hard-back trade books (compared to 20 percent) and 54.6 percent for professional paperbound and mass market paperback books (compared to 100 percent.)^{40/}

In its study, CRS considered Nordberg's estimates of foreign market share in the absence of the Manufacturing Clause as upper bound estimates because they were based on the assumption that any book not constrained to be produced in the United States (e.g., by timeliness or political reasons) would always be produced where the costs are lower. CRS then adjusted the Nordberg estimates, by type of book, using a "reasonable-man" assumption about the maximum level of foreign market share, where the "reasonable-man" assumption was defined as "one not based on any particular data, but one to which a reasonable, disinterested observer would not find serious objection and which appears to be in accord with economic theory or experience."^{41/}

On this basis, CRS assumed the following percentage potential foreign market shares, by type of book, in the absence of the Manufacturing Clause:

<u>Type of Book</u>	<u>Potential Import Market Share</u>
Trade, hard bound	10
Subscription reference	70
Professional, hard bound	40
Professional, soft bound	40
Mass market, paper bound	25
College, hard bound	20
Book club	20
Mail order	50

CRS provided the following rationale for its "reasonable-man" foreign market share assumptions for each book type, and contrasted them with Nordberg's:

Trade, hard bound: Often subject to tight time schedules in both first editions and reprints; also requires high quality in manufacture. Assumptions: CRS--10 percent; Nordberg--20 percent; Nordberg (revised)--10.6 percent.

Subscription reference: Have very predictable time constraints; assumption of 70 percent import penetration is "extremely generous" since cost advantages for main competitors (Europe, Japan) are not significant. Assumptions: CRS--70 percent; Nordberg--100 percent.

Professional (hardbound and softbound): Require high quality standards and some tight time scheduling. Assumption of 40 percent import penetration "seems very generous" considering comparable production costs in the United States, Europe, and Japan. Assumptions: CRS--40 percent; Nordberg--100 percent; Nordberg (revised)--54.6 percent.

Mass market paperbacks: Subject to severe scheduling time constraints and orders for quick reprints; popular mass market paperbacks usually require 5 to 10 reprints in sizeable quantities, depending on market conditions; highly specialized and subject to significant economies of scale. Assumption of 25 percent import penetration is "extremely generous." Assumptions: CRS--25 percent; Nordberg--100 percent; Nordberg (revised)--54.6 percent.

College hardbound: Need to meet delivery schedules determined by the beginning of classes seems to mitigate against long delivery times. Assumption of 20 percent import penetration "seems quite generous." Assumptions: CRS--20 percent; Nordberg--100 percent.

Book club and mail order: Printing abroad appears as a viable alternative for book clubs who reprint their own editions of books and for mail order publications in which time sensitivity is not a major factor; these two categories of books were not considered as being affected by imports in Nordberg's study. CRS assumptions: Book club--20 percent; Mail order--50 percent.

Overall, according to CRS, the individual "reasonable-man" foreign market share levels imply a maximum 16.1 percent potential market share for imports based on unit volume and a maximum 18.5 percent potential market share based on dollar value.^{42/}

CRS also used regression analysis to estimate the potential long-term import penetration level for the U.S. book manufacturing industry in the absence of the Manufacturing Clause. For 73 selected industries, regressions were run which related the level of industry import penetration to five explanatory variables: level of industry wages, the ratio of value added by the manufacturer to industry shipments, the share of industry shipments exported, the average annual growth rate of industry shipments over the period 1972-78, and a dummy variable to indicate whether an industry was considered as high-technology or not. The analysis yielded an estimated equation which was able to explain about 14 percent of the variation in import penetration levels among the industries in the sample.

Using the values for the book printing industry for the explanatory variables (except for the ratio of value added by the manufacturer to industry shipments, which turned out not to be significantly different from zero in the analysis), CRS estimated an import penetration level of 9.3 percent for the book printing industry in the absence of the Clause. After adjusting for possible artificially-high industry wages because of the protection offered by the Clause, CRS estimated that the import penetration for the book manufacturing industry in the absence of the Clause would be 12.7 percent.

The uncertainty attached to these estimates is illustrated by the very wide confidence intervals associated with them. Thus, CRS estimated that the potential long-run import penetration in the book printing industry without the Manufacturing Clause would be around 9.3 to 12.7 percent, with a lower limit at the 90 percent level of confidence of 0.0 percent and an upper limit of 30.0 percent. This means that there is a 90 percent probability that the actual potential import penetration level will be between 0 and 30 percent.

Finally, in comparing the import penetration estimates from the statistical analysis (9.3 to 12.7 percent) with those obtained from the "reasonable-man" method (16.1 or 18.5 percent), CRS indicated the lower results from the statistical analysis are to be expected because the "reasonable-man" foreign market share estimates were "quite generous."

The 1981 DOL study postulated that 30-45 percent of the output of the book publishing and book printing industries would be displaced by imports in the absence of the Manufacturing Clause.^{43/} The 1981 DOL study did not make any estimates of displacement by type of book. In a critique of the DOL study, the Register of Copyrights pointed out that 70 percent of the jobs in book publishing and book printing are in publishing and would therefore not be affected by the termination of the Manufacturing Clause. (According to the 1982 Census of Manufactures, establishments classified in the book publishing sector which engaged in publishing only accounted for 80.3 percent of the number of establishments, 73.5 percent of all employment, and 85.9

percent of the value of shipments, in that sector. These "book publishing only" establishments generally rely on contracting out to commercial printers. The balance of the establishments engage in both book publishing and printing, often relying on in-house or captive printers.) With regard to the remaining 30 percent, the Register of Copyrights posited that not all of the output currently produced (e.g., illustrated works, works of foreign authors, etc.) is protected by the Clause.^{44/}

Finally, based on interviews with domestic publishers and printers and on the responses to a written questionnaire, the USITC found that for most books, the time and distance constraints of overseas printing would rule out distant sources of supply. For these reasons, most trade books, mass market paperbacks, and book club publications would most likely not be printed abroad. Other books, such as elementary and high school textbooks, are not likely to be printed abroad because of fear of losing State adoptions. Religious books, mail order publications, and subscription reference books, which are mass-produced and hence could benefit from scale economies (lower unit costs) associated with long production runs, are not likely to be printed abroad. The USITC concluded that were the Manufacturing Clause terminated,

...the only measurable shift to overseas printing would be limited to certain types of books which would be those characterized as having higher-than-average wage costs [e.g., books with high, but not predominant, proportion of art work and with sewn binding], short production runs, and predictable demand.^{45/}

The USITC estimated that books with these characteristics account for between 2 and 10 percent of U.S. production. The 10 percent estimate is derived under the assumption that all books fitting the above description would be printed overseas, while the 2 percent estimate assumes that only those with the higher labor costs would be printed abroad.^{46/}

c) Employment effects of the termination of the Manufacturing Clause

Because the Manufacturing Clause has been in existence for over 90 years and has influenced the structure and development of the U.S. printing and publishing industry, the ultimate effects of the Clause's termination cannot be estimated with precision.

Assumptions need to be made regarding the current coverage of the Clause as well as the likely impact of its termination on U.S. production and on the importation of previously-prohibited items. Termination of the Clause would be expected to exert new competitive pressures on domestic printers, to the extent that U.S. publishers seek to contract with foreign printers. This foreign competition would tend to moderate price increases for domestically-produced printed matter, and, depending upon market demand conditions, could lead to increased domestic demand and production. These price and income effects, however, are not examined here.

1) Output displacement scenarios: The above review of previous studies which have attempted to estimate the economic effects of the termination of the Manufacturing Clause has revealed that there is considerable uncertainty regarding the magnitude of domestic output which would be displaced by imports if the Clause were terminated. In light of these uncertainties, the approach adopted here is to consider a series of hypothetical displacement scenarios. While the scenarios vary significantly, they were developed on the basis of different assumptions concerning factor intensity, relative factor costs, timeliness, and transportation costs. Each scenario bears some relationship to the displacement estimates made by other analysts. The four scenarios presented here assume that, in varying degrees, only the newspaper, periodical, book publishing, and book printing sectors would be directly affected by the termination of the Manufacturing Clause.

Scenario 1: (Low impact) Assumes that the termination of the Clause would have little effect on domestic output. It assumes that only products of the book printing industry, but not of the book publishing industry, would be affected. Further, it assumes that out of the range of books currently covered by the Clause and susceptible to foreign production, only those which have short production runs, higher-than-average labor costs, predictable demand, and are not time-sensitive would be affected. Since these types of books represent only a small portion of total book printing output (only 2 percent of book production according to the USITC), Scenario 1 assumes that 2 percent of domestic book printing industry shipments would be displaced by imports.

Scenario 2: (Low-Medium impact) Assumes that the termination of the Clause will have a moderate effect on the book printing and book publishing industries. A broader range of outputs of the book printing industry, including subscription reference books with predictable time constraints and some mail order publications which are less time-sensitive, are assumed to be affected, as are similar books produced by book publishers and

printed by domestic printers under contract. Scenario 2 assumes that 2 percent of domestic book publishing and 4 percent of domestic book printing industry shipments would be displaced by imports.

Scenario 3: (Medium-High impact) Assumes that the impact of the termination of the Clause would be heavier and more widespread. It assumes a somewhat higher displacement of output of the book printing sector (approaching the high end of the range estimated by the USITC), which might include professional hard bound and soft bound books. It also assumes that similar types of books produced by book publishers and printed by domestic printers under contract, and some periodicals (e.g., a narrow range of periodicals published monthly or less frequently), may also be affected by termination of the Clause. Thus, Scenario 3 assumes that 2 percent of domestic periodicals, 4 percent of domestic book publishing, and 8 percent of domestic book printing industry shipments would be displaced by imports.

Scenario 4: (High impact) Assumes that the termination of the Clause will be pervasive and touch all four sectors which produce Clause-covered materials susceptible to foreign production. It assumes that a more extensive range of books (exceeding the high range of the USITC displacement estimate and between the two CRS statistical import penetration estimates), including some mass paperbound books, book club editions, and college hard bound texts, plus a limited number of trade hard bound books (e.g., those requiring color composition and with predictable demand), would be affected. It also assumes that similar types of books produced by book publishers and printed by domestic printers under contract, a broader range of periodicals, and a fraction of weekly or monthly newspapers where advertising deadlines do not prevent it, would be affected by termination of the Clause. Scenario 4 assumes that 0.5 percent of domestic newspapers, 4 percent of domestic periodicals, 8 percent of domestic book publishing, and 12 percent of domestic book printing industry shipments would be displaced by imports.

2) Calculation of job opportunity losses: The output displacement scenarios presented above assume that only the products of the book printing (all scenarios), book publishing (in 3 out of 4 scenarios), periodicals (in 2 out of 4 scenarios), and newspapers industries (in 1 out of 4 scenarios) would be directly affected by the termination of the Manufacturing Clause. However, when final domestic demand for products of any one of these four industries falls as the result of import displacement, this, in turn, would have an effect on demand for the output of other industries (both within and outside the printing and publishing industries) which supply materials or provide services to domestic producers of newspapers, periodicals, and books.

To estimate both the direct and indirect potential employment effects associated with the termination of the Manufacturing Clause, an input-output (I-O) table and a set of labor-output ratios were used to translate the hypothesized decreases in final demand (via employment multipliers) into decreases in job

opportunities. This analysis was performed in two steps. First, the potential employment effects within the printing and publishing industries associated with a decrease in final demand for selected amounts of newspapers, periodicals, and books were estimated using the coefficients for the 15 printing and publishing sectors from the detailed (537-sector) I-O table for the United States economy and a set of labor-output ratios. Then, to obtain the effect on industries outside of the publishing and printing, an aggregated (79-sector) I-O table and labor-output ratios were used to translate the hypothesized reductions in final demand for printing and publishing products into job opportunity losses economy wide. A more detailed description of this methodology is given in Appendix A, along with employment multipliers which could be used to generate estimates of job opportunity losses under yet other alternative output displacement scenarios.

3) Job opportunity loss estimates: Given the hypothesized output displacement scenarios, it is estimated that if the Manufacturing Clause were terminated, approximately 900 to 23,000 job opportunities could be lost in the long run in the publishing and printing industries (Table 15). Total job opportunity losses for the printing and publishing industries (SIC 27) as a whole under each scenario are:

Scenario 1:	900 job opportunity losses
Scenario 2:	4,200 job opportunity losses
Scenario 3:	11,500 job opportunity losses
Scenario 4:	23,300 job opportunity losses

These estimates do not include the additional job opportunity losses which might occur outside of the printing and publishing sector.

When compared to total employment in the printing and publishing industries (in Table 3), estimated total job opportunity losses under Scenarios 1, 2 and 3 represent less than 1 percent of actual 1982 employment, while the estimated loss under Scenario 4 is less than 2 percent. Thus, the total potential job opportunity losses for the printing and publishing industries as a whole do not appear to be significant; however, they may be significant for specific subsectors.

In general, for sectors where it is assumed that imports will displace U.S. shipments, the direct job opportunity losses will be larger for that sector than the individual indirect losses of any other supplier sector (Table 15). For example, under each scenario, the sector or sectors assumed to have shipments displaced by imports (i.e., book printing, book publishing, periodicals, and/or newspapers) account for over 75 percent of the job opportunity losses. Under each scenario, commercial printing (SIC 275), blankbooks and bookbinding (SIC 278), and miscellaneous printing services (SIC 279) are the sectors where the majority of indirect job opportunity losses occur.

For the worst case scenario (i.e., Scenario 4), when the job opportunity losses for each sector are compared to that sector's actual 1982 employment, they account for less than 1 percent with the exception of the following: book printing (25 percent), book publishing (6.8 percent), periodicals (4.2 percent), miscellaneous printing services (1.8 percent), and blankbooks and bookbinding (1.4 percent). This suggests that should output displacements occur as assumed in Scenario 4, the book printing industry may face substantial adjustment problems. To a lesser degree, this would also be the case under the other three scenarios. (The estimated job opportunity losses for the book printing sector under the other scenarios, as a percent of actual employment in 1982, are: Scenario 1--2.5 percent; Scenario 2--7.1 percent; and Scenario 3--15.0 percent.)

To obtain total job opportunity losses inclusive of those which may occur outside of the printing and publishing industries, a more aggregated I-O approach was employed. Given the hypothetical output displacement scenarios, it is estimated that if the Manufacturing Clause were terminated, approximately 1,400 to 47,300 job opportunities could be lost in the U.S. economy as a direct result of increased imports. However, offsetting export increases (within or outside of printing and publishing) may eliminate some or all of these job opportunity losses.

Table 16 presents the total job opportunity losses for the 10 I-O sectors of the economy which would be most affected. Even for the worst case scenario (i.e., Scenario 4), the 47,300 potential job opportunity loss is negligible when compared to actual employment in the total nonagricultural economy of 89,566,000 in 1982. Further, many of the affected industries outside of the printing and publishing industries are industries in the service sector, the sector of the U.S. economy which has been the major source of recent job creation.

These estimates refer to potential employment effects associated with hypothesized increases in imports resulting from termination of the Clause. However, any increase in U.S. imports of formerly Clause-covered materials would have to be financed by either increased U.S. exports or a net increase in U.S. borrowing from abroad. With flexible exchange rates, exchange rate adjustments will occur until the current account deficit (net purchases of goods and services, including transfer payments) is equal to the capital account surplus (net increase in U.S. borrowing from abroad). Since termination of the Clause may not affect net U.S. borrowing from abroad, the increase in U.S. imports may lead to an equal (in value terms) increase in U.S. exports. Therefore, in the long term, it is doubtful whether there will be an actual net employment loss economy wide associated with termination of the Clause, although there may be a change in the composition of U.S. output (i.e., some sectors may expand while others may contract).

The estimated indirect job opportunity losses are presented to indicate which sectors outside of printing and publishing might face some adjustment problems if the Manufacturing Clause were terminated. Under each output displacement scenario, 57 percent of the total job opportunity losses would occur within the printing and publishing sector, with the balance occurring in other sectors throughout the economy such as wholesale and retail trade, paper, business services, etc. The total job opportunity loss estimates for the printing and publishing sector presented in Tables 15 and 16 differ due to

the fact that in Table 16, the detailed printing and publishing subsector requirements have been aggregated into a single printing and publishing industry measure in estimating the potential employment effects economy wide.

These estimates of lost job opportunities need to be interpreted carefully. It is important to keep in mind that a given loss of job opportunities does not translate into layoffs, especially not for a relatively healthy segment of the economy, such as printing and publishing, which has been a major source of job creation among manufacturing industries. In fact when, and if, the Manufacturing Clause is terminated, there will be a period of adjustment following its termination. Growth in demand for outputs produced by the printing and publishing industries, voluntary job transfers, retirements, and other changes, may all reduce and possibly more than offset the impact of the termination of the Manufacturing Clause on the domestic printing and publishing workforce. Thus, in the presence of continued employment growth, none of the scenarios considered above may involve actual worker displacements.

The Bureau of Labor Statistics (BLS) has developed three economic growth projections (low trend, moderate trend, and high trend) based on different assumptions concerning growth of the labor force, output, productivity, and other factors.^{47/} These projections are used by BLS to analyze changes in occupational and employment requirements over the next 10 years. The following table presents the BLS moderate-trend projections of employment through 1995 for all manufacturing and for the printing and publishing industries:

<u>Sector</u>	<u>All Employees(thous.)</u>		<u>Average Annual Growth</u>
	<u>Actual 1984</u>	<u>Projected 1995</u>	
Manufacturing.....	19,412	21,124	0.8
Nondurable goods.....	7,890	7,908	0.0
Publishing and printing.....	1,372	1,751	2.2
Newspaper printing and publishing....	441	548	2.0
Periodical and book printing and publishing.....	209	313	3.7
Other printing and publishing	723	890	1.9

Based on these projections, the employment outlook to 1995 is quite favorable for the printing and publishing industries as a whole, and even more favorable for the periodical and book printing and publishing sector. While periodicals and books have been expanding in recent years, most of the employment expansion heretofore has occurred in the periodical and book publishing sectors, rather than in book printing.

4) Limitations of the job opportunity loss estimates: It should be noted that the methods used here to estimate job opportunity losses have certain limitations. An input-output approach was used to calculate both the direct and indirect labor requirements for assumed levels of reduced final demand for products of the U.S. printing and publishing industries. However, this analysis does not assume that final demand for printing and publishing products is reduced but rather that demand for domestically-produced printed matter is reduced, i.e., it is displaced by imports. To the extent that imported printed matter contributes to meeting domestic final demand requirements, job opportunities may not in fact be lost. For example, domestic publishers may ship paper to foreign rather than to domestic printers for use in printing. This analysis has not taken into account the U.S. content of imported merchandise. Neither do the I-O tables take into account the foreign content of domestically-produced merchandise nor the macroeconomic effects of changes in prices or in exchange rates.

In developing estimates of job opportunities losses for SIC 27 and its supplying industries, 1982 labor-output ratios were used. To the extent that labor productivity has increased for a given sector since 1982, the employment effect in that sector will be overstated here.

Also, the job opportunity loss calculations were made assuming fixed average labor requirements per million dollars of output and instantaneous reductions in the level of U.S. production: As mentioned above, there is likely to be a period of adjustment to any policy change such as the termination of the Manufacturing Clause. Further, the use of 1982 average labor-output ratios as substitutes for long run marginal

labor-output ratios will bias estimated employment effects (usually in an upward direction). The direction and magnitude of this bias depends, among other things, on the phase of the business cycle when the policy change takes place and on the extent of any labor shortage or labor hoarding then taking place. Attempts to estimate more accurate marginal labor-output ratios have yielded statistically unreliable results.

The I-O methodology employed here also assumes constant returns to scale, fixed input price ratios, and fixed input proportions of the various factors of production. These assumptions are unrealistic but common to I-O studies. This analysis assumes constant unit costs of production over the relevant range of output variation. To the extent unit production costs fall in response to a decline in U.S. sales, accompanying declines in job opportunities would be lower than estimated here.

Finally, the estimates of job opportunity losses depend critically on the assumptions made about displacement of domestic output by imports. A range of plausible output displacement scenarios have been provided to estimate the possible job opportunity losses. However, readers who feel that other output displacement scenarios are more appropriate, may turn to the employment multipliers given in Appendix A to evaluate their alternative scenarios.

5. Comparisons with other estimates: Table 17 compares the estimated direct employment effects of termination of the Manufacturing Clause in the current analysis with estimates provided in the 1981 DOL study. This comparison is particularly useful in testing the sensitivity of the estimates to different output displacement assumptions since the same basic methodology was used in generating job opportunity loss estimates in both studies. Sources of differences in the two sets of estimates (e.g., because the current analysis relies on a more recent I-O table of the U.S. economy than the 1981 DOL study) are given in Appendix B.

The top panel of Table 17 summarizes the output

displacement assumptions in each of the four scenarios in the current analysis, as well as the high- and low-range assumptions in the 1981 DOL study. The bottom panel of Table 17 presents the direct job opportunity losses associated with each of the assumed displacement scenarios. These estimates differ slightly from those reported in Table 15 because they had to be adjusted (by eliminating indirect losses within the printing and publishing sector) to make them comparable with the direct effects reported in the 1981 DOL study.

It is clear from Table 17 that the marked differences in the two studies regarding the overall magnitude of direct job opportunity losses within the printing and publishing industries associated with termination of the Clause (range of 0.7 to 14.6 thousand job opportunity losses in the current analysis in contrast to 77.6 to 172.2 thousand in the 1981 DOL study) are due primarily to the different treatment of the potential employment effect on the commercial printing sector. While the 1981 DOL study assumed that the output of the commercial printing sector would be directly affected by termination of the Clause--and, further, that imports would displace 15 to 35 percent of the sector's output--the current analysis assumes that this sector would not be directly affected by such action. However, in the current study, indirect job opportunity losses can occur in commercial printing as the result of direct output displacements in book printing, book publishing, periodicals, and newspapers. In the 1981 DOL study, direct job opportunity losses in the commercial printing sector (ranging from 52,700 to 122,900) accounted for 68 to 71 percent of the total number of direct job opportunity losses, reflecting the dominant position--in terms of value of shipments and of employment, as discussed in sections I.a and I.b above--of commercial printing within the printing and publishing industries.

To compare the results of the current study with those of the USITC report, special calculations were run replicating the output displacement scenarios assumed by the USITC. Table 18 presents estimates of the total job opportunity losses

associated with termination of the Manufacturing Clause which were made using the current study's I-O model with the USITC's assumed output displacement scenario (i.e., displacement by imports of 2 to 10 percent of output of the book printing sector) and the estimates reported by the USITC.

While there are some differences in the estimates, which probably arise from differences in the level of aggregation/disaggregation of the I-O tables used in the two studies (e.g., the DOL study used the 79-sector BEA I-O table to calculate indirect effects, while the USITC reportedly used the BLS 159-sector I-O table), they are reasonably close. This is particularly the case for the estimates of total (i.e., economy wide) job opportunity losses associated with Clause termination: under the 2 percent assumed level of output displacement, the estimates are within 3 percent of each other (1,446 job opportunity losses in the current study versus 1,407 in the USITC) and they are within 6 percent (7,228 versus 6,852) under the 10 percent output displacement assumption.

The closeness of the job opportunity loss estimates in the two studies for the one sector of the printing and publishing industries which was considered in both as most sensitive to Clause termination, points to the different sector coverage in the two studies as the main source of differences in the overall job opportunity loss estimates. This reinforces the earlier observation about the sensitivity of the estimates to coverage and output displacement assumptions.

IV. Summary and Conclusions

The domestic printing and publishing industries produce a variety of products for business, educational, scientific, and household consumption. In 1984, shipments by the printing and publishing industries were valued at over \$100 billion, 11 percent higher than in the previous year. The Department of Commerce estimates shipments in 1985 at nearly \$112 billion and projects real growth for 1986 at a rate of 3.4 percent.

Commercial printing and newspapers are the dominant sectors within the printing and publishing industries, in terms of

value of shipments. The share of shipments in 1984 for each of the printing and publishing sectors were: commercial printing (31.1 percent), newspapers (25.1 percent), periodicals (13.7 percent); book publishing (8.8 percent), manifold business forms (5.9 percent); miscellaneous publishing (3.2 percent); book printing (2.7 percent); greeting cards publishing (2.5 percent); lithographic services (1.4 percent); and miscellaneous printing and publishing (5.6 percent).

In recent years, periodicals, miscellaneous publishing, and greeting cards have been the fastest growing sectors of the industry in terms of shipments. Book printing and commercial printing have also performed well. For 1986, the Commerce Department projects that the following subsectors, greeting cards, commercial printing, miscellaneous publishing, miscellaneous printing and publishing, and lithographic services, will grow faster than printing and publishing industries as a whole.

With total employment of 1.4 million persons in 1984, the printing and publishing industries are one of the ten largest employers in the manufacturing sector, accounting for over 7 percent of all manufacturing employment and for over 17 percent of nondurable manufacturing employment. In the ten-year period 1973-82, printing and publishing added about 160,000 wage and salary jobs; an additional 100,000 wage and salary jobs were created between 1982 and 1984. Most of the new jobs created were in the newspaper, miscellaneous publishing, and commercial printing sectors.

Employment is concentrated in the commercial printing (34.1 percent) and newspaper (32.1 percent) sectors of the industries. Other sectors, and their percentage of total employment in 1984, were: periodicals (7.8); book publishing (5.6), blankbooks and bookbinding (5.0), miscellaneous publishing (4.8), printing trade services (3.5), manifold business forms (3.5), book printing (1.9), greeting card publishing (1.8). Printing industries employ relatively higher proportions of production workers compared to those primarily engaged in publishing.

Products of the printing and publishing industries accounted for 0.8 percent of the value of U.S. manufactures exports and 0.4 percent of the value of total U.S. imports in 1984. U.S. imports of printing and publishing products account for approximately one percent of the industry's new supply (value of domestic product shipments plus imports), while exports account for 1.5 percent of product shipments. These import penetration and export proportion ratios have remained fairly stable over the past 15 years. Only three sectors of the printing and publishing industries had import penetration ratios above 1 percentage point in 1985: books (5.2 percent), miscellaneous publishing (1.2), blankbooks and bookbinding (3.2; this ratio is for 1981.)

All of the printing and publishing sectors recorded annual increases in labor productivity over the period 1958-82. These annual increases ranged from a high of 4.3 percent for greeting cards publishing to a low of 0.2 percent for miscellaneous publishing.

While all sectors of the printing and publishing industries are undergoing technological changes, these changes have been particularly rapid in composition and typesetting. Some of these have lowered the requisite skills levels in certain printing and publishing occupations and have led to displacement of some printing workers. Some of these displaced workers have been retrained and reassigned, while others have exited the industry. Attrition, eased by expanding product demand, has facilitated adjustment.

Decisions by firms in the U.S. printing and publishing industries on what to produce, how to produce, and where, depend on several factors, including: product demand, relative costs of inputs, timeliness, and transportation costs.

In 1982, the cost of materials accounted for 36.6 percent of the value of industry shipments and payroll costs for about 26 percent. Certain sectors, such as book printing and commercial printing, use labor and materials very intensively (labor and materials costs account for over 70 percent of the value of shipments) while others, such as book publishing and

greeting card publishing, rely on them to a much lesser extent (less than 50 percent).

Hourly earnings of production workers in the printing and publishing industries tend to be slightly higher than the average for all manufacturing, and markedly higher than the average for nondurable goods manufacturing. Industry sectors such as printing trade services, blankbooks and bookbinding, book printing, newspapers, and commercial printing, are very labor intensive, with payroll costs accounting for about 30 percent or more of value of shipments. Labor intensity is much lower for publishing-oriented sectors, such as periodicals (payroll accounted for 12 percent of the value of shipments) and book publishing (18 percent).

Labor costs in the printing and publishing industries have lagged behind, or kept pace with, similar costs in all manufacturing, in nondurable manufacturing, or in the nonfarm business sector. Paper costs constitute the major material cost of production in the newspapers, periodicals, book publishing, and book printing industries.

In 1982, compensation for U.S. printing and publishing workers was roughly equivalent to that received by similar workers in Sweden, the Federal Republic of Germany, and Denmark, and lower than for workers in Switzerland. Labor compensation in Japan was roughly equivalent to 54 percent of U.S. rates; in Israel, 39 percent; in Hong Kong and Singapore, 18 percent; in Korea, 16 percent; and in Taiwan, 11 percent.

Significant labor cost differentials, particularly with regard to Pacific Basin nations, are counterbalanced by considerations of timeliness and transport cost. Timeliness is very important with regard to the output of several sectors, particularly newspapers and periodicals. The bulkiness of the outputs of the printing and publishing industries tends to make them expensive to transport. For printed materials produced abroad, transportation costs can be significant particularly if transoceanic shipping is involved.

The Manufacturing Clause, which is part of the Copyright Act of 1976, provides a measure of protection from foreign

competition for U.S. producers of certain printed materials. The Clause prohibits imports of copies of works preponderantly of nondramatic literary materials, in the English language, authored by U.S. citizens or domiciliaries, and of U.S. copyrighted material, unless manufactured in the United States or Canada. The 1976 Copyright Act provided for the expiration of the Clause on July 1, 1982. The Congress extended it for a four-year period, or until July 1, 1986. At present, Congress is again considering the future of the Manufacturing Clause.

Because the Manufacturing Clause has been in existence for over 90 years and has influenced the structure and development of the U.S. printing and publishing industries, the ultimate effects of its termination can not be estimated precisely. The current study examines only the potential employment effects or termination of the Manufacturing Clause, and it does not consider employment effects associated with its extension or possible retaliatory actions by foreign nations.

The Manufacturing Clause generally applies directly only to outputs of four sectors of the printing and publishing industries: newspapers, periodicals, book publishing, and book printing. Outputs of other sectors are not believed to be directly affected, since they are primarily pictorial (e.g., greeting cards) or copyright is not claimed (e.g., manifold business forms).

There is little consensus about the portion of the output of the newspapers, periodicals, book publishing, and book printing sectors that would be susceptible to foreign production should the Clause be terminated. Any foreign production that results in displacement of U.S. production will affect U.S. employment in those industries and also in related supplier industries.

Previous studies on the termination of the Clause by Nordberg, Moore for the Department of Labor (1981 DOL study), the Congressional Research Service (CRS), and the United States International Trade Commission (USITC), when taken together, assumed the following percentages of domestic production would be displaced by imports: newspapers, 0 to 2 percent;

periodicals, 0 to 15 percent; book printing (combined with book publishing, in some cases), 2 to 45 percent.

In view of the wide range of assumptions regarding output displacement, and the sensitivity of estimated employment effects to these assumptions, the approach adopted here is to analyze a series of hypothetical displacement scenarios based on assumptions about factors which influence production decisions (factor intensity, relative factor costs, timeliness, transportation costs). The four scenarios are:

Scenario 1: (Low impact) Assumes that the termination of the Clause would have little effect on domestic output and affect only book printing. Scenario 1 assumes that 2 percent of domestic book printing industry shipments would be displaced by imports.

Scenario 2: (Low-Medium impact) Assumes that the termination of the Clause will have moderate effect on the book printing and book publishing industries. Scenario 2 assumes that 2 percent of domestic book publishing and 4 percent of domestic book printing industry shipments would be displaced by imports.

Scenario 3: (Medium-High impact) Assumes that the impact of the termination of the Clause would be heavier and more wide-spread. Scenario 3 assumes that 2 percent of domestic periodicals, 4 percent of domestic book publishing, and 8 percent of domestic book printing industry shipments would be displaced by imports.

Scenario 4: (High impact) Assumes that termination of the Clause will be pervasive and touch all four sectors which produce Clause-covered materials susceptible to foreign production. Scenario 4 assumes that 0.5 percent of domestic newspapers, 4 percent of domestic periodicals, 8 percent of domestic book publishing, and 12 percent of domestic book printing industry shipments would be displaced by imports.

It is estimated that if the Manufacturing Clause were terminated, total job opportunity losses for the printing and publishing industries as a whole under each of the hypothetical scenarios would be:

Scenario 1--	900 job opportunity losses
Scenario 2--	4,200 job opportunity losses
Scenario 3--	11,500 job opportunity losses
Scenario 4--	23,300 job opportunity losses

These estimates do not include any additional job opportunity losses which might occur outside of the printing and publishing sector. These estimates range from less than 1 percent to less than 2 percent of actual 1982 employment levels in the printing and publishing industries. However, while the total job opportunity losses for the printing and publishing industries as a whole may not be significant, certain subsectors may be affected more adversely than others. Particularly, the book printing

industry may face substantial adjustment problems as the four scenarios depict a potential job opportunity losses of from 2.5 to 25 percent of actual 1982 employment levels.

In addition to these job opportunity losses within the printing and publishing industries, industries which supply them would also be affected. It is estimated that from 1,400 to 47,300 job opportunities could be lost in the U.S. economy as a direct result of increased imports. However, offsetting export increases may eliminate some or all of these opportunity losses. Under each output displacement scenario, 57 percent of the job opportunity losses would occur in the printing and publishing industries, with the balance occurring in supplying industries throughout the economy such as wholesale and retail trade, paper, business services, etc.

Estimates of job opportunity losses in the current study need to be interpreted carefully. It is important to keep in mind that a given loss of job opportunities does not necessarily translate into layoffs, especially for a relatively healthy sector of the economy such as printing and publishing, which has been a major source of job creation among manufacturing industries. (BLS has projected a quite favorable employment outlook to 1995 for the periodical and book printing and publishing sector.)

When, and if, the Manufacturing Clause is terminated there will probably be a period of adjustment following its termination. Growth in demand for outputs produced by the printing and publishing industries, voluntary job transfers, retirements, and other changes, may all reduce the actual impact of the termination of the Manufacturing Clause on the domestic printing and publishing workforce. Further, job opportunity loss estimates developed are subject to the limitations of the input-output methods used.

Comparison of the results of this analysis with those of the 1981 DOL study reveals that most of the difference between the two sets of estimates arise from the assumption in the earlier study that output of the commercial printing industry would be directly, and significantly, affected by termination of the Clause. Job opportunity losses in the commercial printing sector accounted for

nearly 70 percent of total job opportunity losses in the printing and publishing industries in the earlier study whereas no direct job opportunity losses are assumed to occur for commercial printing in the current study. In addition, for the same assumed output displacement, estimates of job opportunity losses by the USITC, using methods similar to those used in this study, are consistent with the ones presented here. This further illustrates the sensitivity of estimates to assumptions concerning sector coverage and output displacement.

Footnotes

1/ See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual, 1972 (Washington: U.S. Government Printing Office, 1972).

2/ This section relies heavily on U.S. Department of Commerce, U.S. Industrial Outlook 1986 (Washington: U.S. Government Printing Office, 1985), Chapter 27, Printing and Publishing.

3/ In this discussion, merchandise trade balances are calculated as the difference between domestic exports (f.a.s.) and imports for consumption (customs value).

4/ Based on data from the U.S. Industrial Outlook 1986, op. cit., and from the Bureau of Labor Statistics; the import penetration ratio for SIC 278 is for 1981. For methodology, uses, and limitations of import penetration measures, see Gregory K. Schoepfle, "Imports and Domestic Employment: Identifying Affected Industries," Monthly Labor Review (August 1982).

5/ This section draws heavily on U.S. Bureau of Labor Statistics, The Impact of Technology on Labor in Five Industries, Bulletin 2137 (Washington: U.S. Government Printing Office, 1982).

6/ Based on data from U.S. Bureau of Labor Statistics, Employment and Earnings, various issues.

7/ For a case study of worker adjustment to new technologies in the U.S. newspaper industry, see James N. Dertouzos and Timothy H. Quinn, "Bargaining Responses to the Technology Revolution: The Case of the Newspaper Industry," Rand Publication No. R-3144-DOL (December 1984).

8/ The discussion on demand for outputs of the printing and publishing industries is based on U.S. Industrial Outlook 1986, op. cit.

9/ United States International Trade Commission, Study of the Economic Effects of Terminating the Manufacturing Clause of the Copyright Law, Publication 1402 (July 1983), especially pp. 65-69.

10/ Hourly compensation is defined as: (1) all payments made directly to the workers--pay for time worked (basic time and piece rates plus overtime premiums, shift differentials, other bonuses and premiums paid regularly each pay period, and cost-of-living adjustments), pay for time not worked (vacations, holidays, and other leave), all bonuses and other special payments, and the cost of payments in kind--before payroll deductions of any kind; and (2) employer contributions to legally required insurance programs and contractual and private benefit plans. In addition, for some

countries, compensation is adjusted for other taxes on payrolls or employment (or reduced to reflect subsidies), even if they are not for the direct benefit of workers, because such taxes are regarded as labor costs. However, hourly compensation does not include all items of labor costs. The costs of recruitment, employee training, and plant facilities and services--such as cafeterias and medical clinics--are not covered because data are not available for most countries. For consistency, compensation is measured on an hours-worked basis for every country. See Appendix, "Hourly Compensation Costs for Production Workers--36 Manufacturing Industries, 34 Countries, 1975-85," unpublished data, U.S. Bureau of Labor Statistics, Office of Productivity and Technology, (January 1986).

11/ Calculated from exchange rates reported in Federal Reserve Bulletin, various issues.

12/ The broad measure is an index of weighted-average exchange values of the U.S. dollar against a basket of the currencies of fourteen industrial countries; weights reflect 1983 U.S. exports and imports with those countries. It appears, e.g., in U.S. Department of Commerce, International Economic Indicators (March 1985), p. 58.

13/ Ibid., p. 47.

14/ U.S. Industrial Outlook 1986, op. cit., p. 5-1.

15/ Based on data in Ayer Directory of Publications, 1984 (Fort Washington, Pennsylvania: IMS Press, 1984), p. viii.

16/ Industry shipments data are from U.S. Bureau of the Census, 1982 Census of Manufactures, Industry Series, Report MC82-1-27A: Newspapers, Periodicals, Books, and Miscellaneous Printing (Washington: U.S. Government Printing Office, 1985).

17/ According to Mr. Robert Venne, Import Specialist with the U.S. Customs Service in the Ogdensburg, N.Y. Customs District, newspapers imports from Canada are primarily composed of weekly publications such as Star, Midnight, Globe, Flash, etc.

18/ Ayer Directory of Publications, 1984, loc. cit.

19/ Study of the Economic Effects of Terminating the Manufacturing Clause of the Copyright Law, op. cit., p. 72.

20/ Calculated from data in U.S. Bureau of the Census, 1982 Census of Manufactures, Industry Series, (Washington: U.S. Government Printing Office, 1984).

21/ Based on data in U.S. Bureau of the Census, 1982 Census of Manufactures, Industry Series, Report MC82-1-27A: Newspapers, Periodicals, Books and Miscellaneous Printing; MC82-1-27B: Commercial Printing and Manifold Business Forms; and MC82-1-27C: Greeting Cards, Bookbinding, Printing Trade Services (Washington: U.S. Government Printing Office, 1985).

22/ Study of the Economic Effects of Terminating the Manufacturing Clause of the Copyright Law, op. cit., p. 96.

23/ The cost of transportation as a percent of foreign port value was derived from data on the value of imports on a c.i.f. (cost, insurance, and freight) and customs value basis.

24/ Study of the Economic Effects of Terminating the Manufacturing Clause of the Copyright Law, loc. cit.

25/ Exempted from domestic manufacturing requirements, pursuant to Section 601(b) of the 1976 Copyright Act, are the following:

(a) works substantially by foreign nationals not U.S. domiciliaries, or works of U.S. nationals domiciled

continuously for 1 year outside the United States, as of the date of importation or distribution; works of U.S. nationals, done for hire, in which a substantial part of the work was done for an employer or person not a U.S. national, domiciliary, corporation, or enterprise;

(b) works each imported in a total quantity (cumulative) not in excess of 2000 copies and accompanied by an import statement under seal of the Copyright Office;

(c) works imported for government use, other than in schools;

(d) works imported at one time for personal use, copies entered in the baggage of persons arriving from abroad, and copies intended for the library collections of nonprofit scholarly, educational, or religious organizations;

(e) works reproduced in raised character for the blind;

(f) works not manufactured in the United States or Canada and each publicly distributed in the United States in an amount up to 2000 copies in addition to those imported under (c) and (d) above; and

(g) works first published abroad under license or transfer from the author to a non-U.S. national, domiciliary, or corporation, where the authors of substantial parts of any work obtain compensation for the license or transfer; where there has been no publication or an authorized edition of the work of which copies were manufactured in the United States; and, along with all the foregoing criteria, where the copies were produced under license or transfer by the author or by any transferees or licensees of the right of first publication to non-U.S. national, domiciliaries, or corporations.

26/ The Manufacturing Clause has permitted Canadian production of covered printing matter since January 1, 1978.

27/ The 50 percent criterion was established in a 1981 court decision, Stonehill Communications, Inc. v. Martuge, and has been interpreted as making the Manufacturing Clause less restrictive.

28/ That S.1822 would expand the product coverage of the Manufacturing Clause is the judgement of several witnesses who appeared before the Subcommittee on Patents, Copyrights and Trademarks, Committee on the Judiciary, at hearings held on January 21, 1986. See, e.g., testimony of Donald J. Quigg, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, p.6.

29/ The characterization of output of the industry that follows is based on U.S. International Trade Commission, Study of the Economic Effects of Terminating the Manufacturing Clause of the Copyright Law, op. cit., pp. 98-99 and letter from the Register of Copyrights to Representative Kastenmeier dated December 17, 1981, as reproduced in the Congressional Record (July 13, 1982), pp. S8105-S8106.

30/ E. Wayne Nordberg, statement before the Trade Subcommittee, Committee on Ways and Means, May 27, 1982, as reproduced in Committee on Ways and Means, Extension of the Manufacturing Clause of the Copyright Law (Washington: U.S. Government Printing Office, 1982).

31/ Michael F. Moore, The Employment Effects of Eliminating the Manufacturing Clause of the U.S. Copyright Law, Bureau of International Labor Affairs, U.S. Department of Labor (15 June 1981), as reproduced in Congressional Record (13 July 1982), pp. S 8100-S 8103.

32/ Congressional Research Service, Economic Concerns Relating to the Elimination of the Manufacturing Clause of the U.S. Copyright Law (Washington, 1981).

33/ Study of the Economic Effects of Terminating the Manufacturing Clause of the Copyright Law, op. cit.

34/ Ibid., p. 98

35/ Moore, op. cit., p. S 8101.

36/ Letter from the Register of Copyrights to Representative Kastenmeier, op. cit., p. S 8105.

37/ Nordberg, op. cit., p. 64.

38/ Ibid., p. 68.

39/ Based on *ibid.*, pp. 64, 68.

40/ Economic Concerns Relating to the Elimination of the Manufacturing Clause of the U.S. Copyright Law, op. cit., p. 152.

41/ Ibid.

42/ Ibid., p. 154.

43/ Moore, op. cit., p. S 8101.

44/ Letter from the Register of Copyrights to Representative Kastenmeier, op. cit., p. S 8105.

45/ Study of the Economic Effects of Terminating the Manufacturing Clause of the Copyright Law, op. cit., p. 93.

46/ Ibid., p. 97.

47/ For details on assumptions and methodology underlying these projections, see e.g., Valerie Personick, "A second look at industry output and employment needs through 1995," *Monthly Labor Review* (November 1985).

Table 1: Printing and Publishing: Value of Industry Shipments, 1979-85

(in millions of current dollars)

SIC	Industry	1979	1980	1981	1982	1983	1984 ^{1/}	1985 ^{1/}
27	Printing and publishing	62,417	69,544	77,261	85,797	92,834	103,053	111,455
271	Newspapers	16,197	17,963	20,050	21,276	23,259	25,823	27,998
272	Periodicals	8,311	8,965	9,843	11,478	12,437	14,086	15,254
2731	Book publishing	5,574	6,114	6,760	7,740	8,427	9,100	9,840
2732	Book printing	2,024	2,245	2,556	2,392	2,572	2,815	3,005
274	Miscellaneous publishing	2,142	2,505	2,675	2,871	3,012	3,285	3,605
275	Commercial printing ^{2/}	18,555	20,639	23,149	27,115	28,978	32,065	34,790
276	Manifold business forms	3,929	4,279	4,735	5,059	5,311	6,039	6,220
277	Greeting cards	1,366	1,596	1,904	1,894	2,251	2,611	2,963
2795	Lithographic services	894	1,059	1,172	1,188	1,289	1,419	1,535
27--	Miscellaneous printing and publishing ^{3/}	3,425	4,179	4,417	4,783	5,298	5,810	6,245

^{1/}Estimated.^{2/}Includes: 2751--Commercial printing, letterpress; 2752--Commercial printing, lithographic; and 2754--Commercial printing, gravure.^{3/}Includes: 2753--Engraving and plate printing; 2782--Blankbooks and looseleaf binders; 2789--Bookbinding; 2791--Typesetting; 2793--Photoengraving; and 2794--Electrotyping and stereotyping.SOURCE: U.S. Department of Commerce, U.S. Industrial Outlook 1986

Table 2: Printing and Publishing: Value of Industry Shipments, 1979-85

(in millions of 1982 dollars)

SIC	Industry	1979	1980	1981	1982	1983	1984 ^{1/}	1985 ^{1/}
27	Printing and publishing	N/A	N/A	N/A	85,797	88,951	93,148	95,828
271	Newspapers	21,144	21,352	21,870	21,276	21,269	22,090	22,488
272	Periodicals	10,436	10,455	11,025	11,478	11,478	12,081	12,262
2731	Book publishing	7,153	7,030	7,253	7,740	7,965	8,191	8,461
2732	Book printing	N/A	N/A	N/A	2,392	2,520	2,676	2,772
274	Miscellaneous publishing	N/A	N/A	N/A	2,871	3,017	3,168	3,372
275	Commercial printing ^{2/}	23,219	23,294	24,003	27,115	28,791	30,422	31,484
276	Manifold business forms	N/A	N/A	N/A	5,059	5,250	5,605	5,717
277	Greeting cards	1,698	1,789	1,963	1,894	2,222	2,189	2,288
2795	Lithographic services	N/A	N/A	N/A	1,188	1,256	1,319	1,372
27--	Miscellaneous printing and publishing ^{3/}	N/A	N/A	N/A	4,783	5,183	5,407	5,612

^{1/} Estimated.^{2/} Includes: 2751--Commercial printing, letterpress; 2752--Commercial printing, lithographic; and 2754--Commercial printing, gravure.^{3/} Includes: 2753--Engraving and plate printing; 2782--Blankbooks and looseleaf binders; 2789--Bookbinding; 2791--Typesetting; 2793--Photoengraving; and 2794--Electrotyping and stereotyping.

NOTE: N/A = not available.

SOURCE: U.S. Department of Commerce, U.S. Industrial Outlook 1986.

Table 3: Total Employment, Annual Averages, 1979-85
(in thousands)

SIC	Industry	1979	1980	1981	1982	1983	1984	1985 ^{1/}
20-39	Manufacturing	21,040	20,285	20,170	18,781	18,434	19,412	19,424
20-23, 26-31	Nondurable goods	8,280	8,098	8,061	7,741	7,702	7,890	7,859
27	Printing and publishing	1,235.1	1,252.1	1,266.3	1,272.1	1,298.8	1,372.4	1,421.4
271	Newspapers	420.1	419.9	419.8	419.2	426.3	440.6	453.7
272	Periodicals	82.0	89.5	95.3	97.7	100.3	106.7	108.8
2731	Book publishing	70.4	70.8	71.0	72.5	73.3	76.3	79.7
2732	Book printing	31.5	29.8	29.8	28.0	24.9	26.1	25.8
274	Miscellaneous publishing	46.1	48.2	49.7	50.6	56.4	65.3	71.3
275	Commercial printing	407.1	413.7	419.7	425.7	437.1	467.9	488.3 ^{2/}
276	Manifold business forms	47.4	49.4	48.7	47.5	47.1	47.8	48.0
277	Greeting card publishing ^{3/}	24.3	25.1	24.9	24.5	23.4	24.3	24.8
278	Blankbooks and bookbinding	63.2	61.8	62.4	61.6	64.8	69.3	70.2
279	Printing trade services	42.9	44.0	44.9	45.0	45.2	48.3	51.0

^{1/} Preliminary.

^{2/} Estimated.

^{3/} Unpublished data.

SOURCE: Bureau of Labor Statistics, Employment and Earnings, various issues.

Table 4: Production Worker Employment, Annual Averages, 1979-85

(in thousands)

SIC	Industry	1979	1980	1981	1982	1983	1984	1985 ^{1/}
20-39	Manufacturing	15,068	14,214	14,020	12,742	12,530	13,310	13,214
20-23, 26-31	Nondurable goods	5,958	5,772	5,727	5,431	5,413	5,561	5,522
27	Printing and publishing	697.2	698.9	699.3	699.2	711.8	755.9	784.2
271	Newspapers	167.3	163.5	160.8	158.7	160.0	166.0	171.1
272	Periodicals	13.9	16.3	18.7	21.0	21.8	24.4	27.5
2731	Book publishing	26.9	26.9	27.1	27.6	28.3	29.0	31.9
2732	Book printing	26.7	24.8	24.6	22.8	20.3	21.1	20.7
274	Miscellaneous publishing	28.1	26.6	26.4	26.6	30.6	35.2	38.4
275	Commercial printing	302.5	307.3	308.8	312.1	319.2	342.5	355.22/
276	Manifold business forms	33.3	34.4	34.1	33.3	32.7	33.1	33.3
277	Greeting card publishing ^{3/}	14.6	15.4	14.8	14.0	12.9	13.3	11.9
278	Blankbooks and bookbinding	52.4	50.9	50.9	49.8	52.4	56.0	56.6
279	Printing trade services	31.6	32.8	33.2	33.3	33.6	35.5	37.7

^{1/} Preliminary.^{2/} Estimated.^{3/} Unpublished data.SOURCE: U.S. Bureau of Labor Statistics, Employment and Earnings, various issues.

Table 5: Ratio of Production Workers to Total Employment
(percentages)

SIC	Industry	1979	1980	1981	1982	1983	1984	1985
20-39	Manufacturing	71.6	70.1	69.5	67.8	68.0	68.6	68.0
20-23, 26-31	Nondurable goods	72.0	71.3	71.0	70.2	70.3	70.5	70.3
27	Printing and publishing	56.4	55.8	55.2	55.0	54.8	55.1	55.2
271	Newspapers	39.8	39.8	38.3	37.9	37.5	37.7	37.7
272	Periodicals	17.0	18.2	19.6	21.5	21.7	22.9	25.3
2731	Book publishing	38.2	38.0	38.2	38.1	38.6	38.0	40.0
2732	Book printing	84.8	83.2	82.6	81.4	81.5	80.8	80.2
274	Miscellaneous publishing	70.0	55.2	53.1	52.6	54.3	53.9	53.9
275	Commercial printing	74.3	74.3	73.6	73.3	73.0	73.2	72.7
276	Manifold business forms	70.3	69.6	70.0	70.1	69.4	69.2	69.4
277	Greeting card publishing	60.1	61.4	59.4	57.1	55.1	54.7	48.0
278	Blankbooks and bookbindings	82.9	82.4	81.6	80.8	80.8	80.8	80.6
279	Printing trade services	73.7	74.5	73.9	74.0	74.4	73.5	73.9

SOURCE: Calculated from Tables 3 and 4.

Table 6: U.S. Exports of Printing and Publishing Products, 1979-84
U.S. Domestic Exports

(f.a.s. value basis, in millions of dollars)

SIC	Description	1979	1980	1981	1982	1983	1984
271	Newspapers-----	7.1	9.3	10.2	12.0	15.3	20.1
272	Periodicals-----	217.7	232.9	262.3	304.4	387.8	406.4
273	Books and pamphlets-----	439.0	510.8	601.3	640.6	609.2	639.9
274	Miscellaneous publications-----	18.7	21.8	26.9	27.2	24.3	25.8
275	Commercial printed matter-----	254.4	301.9	366.1	324.0	243.2	241.2
276	Manifold business forms-----	3.7	5.3	9.2	7.5	6.8	8.5
277	Greeting cards-----	9.0	11.5	13.3	14.1	14.1	14.7
278	Blankbooks, looseleaf binders-----	10.7	13.8	17.6	18.6	14.2	12.9
279	Printing blocks, cylinders, etc.--	6.8	8.1	8.5	9.3	8.3	8.7
	TOTAL-----	967.2	1,115.4	1,317.5	1,357.6	1,323.2	1,378.2

SOURCE: Compiled from official statistics of the U.S. Department of Commerce.

Table 7: U.S. Imports of Printing and Publishing Products, 1979-84
U.S. Imports for Consumption

(customs value basis, in millions of dollars)

SIC	Description	1979	1980	1981	1982	1983	1984
271	Newspapers-----	18.4	34.9	50.5	63.1	70.3	84.1
272	Periodicals-----	58.2	67.2	51.9	45.5	45.9	60.4
273	Books and pamphlets-----	272.8	308.5	300.1	322.9	381.6	531.5
275	Commercial printed matter-----	154.5	178.5	187.5	187.0	220.9	294.0
276	Manifold business forms-----	0.4	0.9	0.9	0.6	0.6	0.7
277	Greeting cards-----	6.2	6.8	8.2	8.7	11.6	14.1
278	Blankbooks, looseleaf binders-----	35.7	31.6	37.7	43.1	59.4	83.3
279	Steel plates, stereotype, etc.--	0.9	0.8	2.1	1.3	4.5	2.1
	TOTAL-----	547.2	629.1	639.0	672.2	794.7	1,070.2

NOTE: Imports of items in SIC 274, which consist mainly of catalogs and directories, are included under SIC 273 and 275.

SOURCE: Compiled from official statistics of the U.S. Department of Commerce.

Table 8: Annual Average Rates of Change in Output Per Employee Hour, Output, and Employee Hours, 1958-82 and Selected Periods

Sector/Industry	Average Annual Rate of Change ^{1/}									
	Output Per Employee Hour			Output			Employee Hours			
	1958-82	1958-73	1973-82	1958-82	1958-73	1973-82	1958-82	1958-73	1973-82	
Nonfarm business sector	1.7	2.4	0.5	3.3	4.1	2.2	1.7	1.7	1.7	1.7
Manufacturing sector	2.4	2.9	1.6	3.3	4.5	1.6	0.9	1.6	0.0	0.0
Nondurable manufacturing sector	2.9	3.2	2.3	3.4	4.3	2.1	0.4	1.0	-0.2	-0.2
27 Printing and publishing	1.5	1.9	0.5	2.8	3.3	3.0	1.3	1.3	2.5	2.5
271 Newspapers	0.9	1.5	-0.9	1.9	2.5	1.2	1.0	0.9	2.2	2.2
272 Periodicals	2.7	2.5	3.6	3.2	2.9	6.2	0.5	0.4	2.6	2.6
2731 Book publishing	0.3	0.3	-0.5	1.9	2.5	2.0	1.7	2.2	2.5	2.5
2732 Book printing	0.6	0.6	0.8	2.2	3.4	2.3	1.6	2.8	1.5	1.5
274 Miscellaneous publishing	0.2	0.2	0.6	4.1	5.2	3.9	3.9	5.0	3.3	3.3
275 Commercial printing ^{2/}	1.7	2.4	0.3	3.3	3.8	3.3	1.5	1.4	3.0	3.0
276 Manifold business forms	2.8	3.5	1.1	6.1	7.7	3.4	3.2	4.1	2.3	2.3
277 Greeting card publishing	4.3	4.1	4.1	3.6	4.6	4.0	-0.7	0.6	-0.1	-0.1
278 Blankbooks and bookbinding	2.0	2.0	0.5	3.6	4.0	4.0	1.6	1.9	3.5	3.5
279 Printing trade services ^{3/}	0.9	1.2	0.5	0.0	0.3	2.5	-1.0	-0.9	2.0	2.0

^{1/} Average annual rates of change are based on the linear least squares trends of the logarithms of the index numbers.

^{2/} Includes Lithographic Platemaking Services (SIC 2795).

^{3/} Excludes Lithographic Platemaking Services (SIC 2795).

SOURCE: U.S. Bureau of Labor Statistics, U.S. DOL News Release (86-37) and unpublished data for printing and publishing industries (SIC 271-279).

Table 9: Printing and Publishing: Value of Industry Shipments,
Materials Costs, Payroll, and Wages, 1982

SIC Industry	millions of dollars				Percent of value of shipments		
	Value of Shipments	Materials	Payroll	Wages	Materials	Payroll	Wages
27 Printing and publishing	85,796.9	31,377.2	22,706.9	11,307.4	36.6	26.4	13.2
271 Newspapers	21,276.3	6,006.4	6,554.7	2,386.6	28.2	30.8	11.2
272 Periodicals	11,478.0	4,568.1	1,986.1	243.2	39.8	17.3	2.1
2731 Book publishing	7,740.0	2,420.0	1,327.3	237.1	31.2	17.1	3.1
2732 Book printing	2,392.4	948.1	762.5	542.6	39.6	31.9	22.7
274 Miscellaneous publishing	2,871.3	909.6	705.9	206.2	31.7	24.6	7.2
275 Commercial printing	27,699.8	11,979.0	8,087.2	5,500.2	43.2	29.2	19.9
276 Manifold business forms	5,058.7	2,563.1	934.0	634.3	50.7	18.5	12.5
277 Greeting cards	1,893.6	554.6	344.2	155.2	29.3	18.2	8.2
278 Blankbooks and bookbinding	2,802.9	854.2	903.1	635.6	30.5	32.2	22.7
279 Printing trade services	2,583.8	574.1	1,101.8	766.5	22.2	42.6	29.7

SOURCE: U.S. Bureau of the Census, 1982 Census of Manufactures.

Table 10: Paper, Labor, and Total Book Costs, Per Unit
by Selected Types of Book and Run Sizes, 1982

(dollars)

	<u>Book 1^{1/}</u>	<u>Book 2^{2/}</u>	<u>Book 3^{3/}</u>
<u>Run 1 (2,000 copies)</u>			
Paper cost	0.68	0.72	0.68
Labor cost	0.46	0.54	0.39
Book cost	2.69	2.92	2.31
Paper cost/book cost (%)	25	24	29
Labor cost/book cost (%)	17	19	17
<u>Run 2 (5,000 copies)</u>			
Paper cost	0.56	0.55	0.56
Labor cost	0.27	0.32	0.20
Book cost	1.79	1.98	1.46
Paper cost/book cost (%)	31	27	38
Labor cost/book cost (%)	15	16	14
<u>Run 3 (10,000 copies)</u>			
Paper cost	0.52	0.52	0.52
Labor cost	0.20	0.25	0.14
Book cost	1.49	1.65	1.16
Paper cost/book cost (%)	34	32	44
Labor cost/book cost (%)	13	15	12
<u>Run 4 (25,000 copies)</u>			
Paper cost	0.49	0.49	0.49
Labor cost	0.20	0.25	0.14
Book cost	1.29	1.41	0.94
Paper cost/book cost (%)	37	34	52
Labor cost/book cost (%)	14	14	10
<u>Run 5 (50,000 copies)</u>			
Paper cost	0.48	0.47	0.48
Labor cost	0.14	0.18	0.08
Book cost	1.20	1.32	0.87
Paper cost/book cost (%)	40	36	55
Labor cost/book cost (%)	11	14	9

^{1/}Book 1 -- Hardcover, adhesive binding, 320 pages.^{2/}Book 2 -- Hardcover, sewn binding, 320 pages.^{3/}Book 3 -- Paperback, adhesive binding, 320 pages.

Source: U.S. International Trade Commission, Study of the Economic Effects of Terminating the Manufacturing Clause of the Copyright Law, publication 1402 (July 1983), pp. 63,64.

Table 11: Average Hourly Earnings, Annual Averages, 1979-85

SIC	Industry	(in current dollars)						
		1979	1980	1981	1982	1983	1984	1985 ^{1/}
20-39	Manufacturing	6.70	7.27	7.99	8.49	8.83	9.18	9.52
20-23, 26-31	Nondurable goods	6.01	6.55	7.18	7.74	8.08	8.37	8.68
27	Printing and publishing	6.94	7.53	8.19	8.74	9.11	9.40	9.69
271	Newspapers	7.31	7.72	8.35	8.89	9.24	9.51	9.73
272	Periodicals	6.38	7.16	7.80	8.86	9.56	10.06	10.18
2731	Book publishing	5.83	6.55	7.29	7.84	7.98	8.12	8.15
2732	Book printing	6.48	6.99	7.71	8.32	8.88	8.98	9.38
274	Miscellaneous publishing	6.02	6.51	7.22	7.87	8.19	8.48	8.78
275	Commercial printing	7.19	7.85	8.51	9.04	9.41	9.69	10.02 ^{2/}
276	Manifold business forms	6.70	7.41	8.12	8.76	9.26	9.57	9.99
277	Greeting card publishing ^{3/}	5.34	5.80	6.53	7.08	7.49	8.06	8.22
278	Blankbooks and bookbinding	5.31	5.78	6.31	6.76	7.17	7.38	7.63
279	Printing trade services	8.96	9.51	10.17	10.61	10.88	11.38	11.58

^{1/}Preliminary.^{2/}Estimated.^{3/}Unpublished data.SOURCE: U.S. Bureau of Labor Statistics, Employment and Earnings, various issues.

Table 12: Annual Average Rates of Change in Compensation Per Hour, Real Compensation Per Hour and Unit Labor Cost, 1967-82 and Selected Periods

Sector/Industry	Average Annual Rate of Change ^{1/}								
	Compensation Per Employee Hour		Real Compensation Per Employee Hour		Unit Labor Cost				
	1967-82	1967-73	1973-82	1967-82	1967-73	1973-82	1967-82	1967-73	1973-82
Nonfarm business sector	8.3	6.9	9.0	0.8	2.0	0.0	7.3	5.2	8.5
Manufacturing sector	8.5	6.5	9.5	1.0	1.6	0.5	6.2	3.4	7.8
Nondurable manufacturing sector	8.4	6.4	9.4	0.9	1.4	0.4	5.4	2.2	7.0
27 Printing and publishing	7.1	6.9	7.1	-0.4	2.0	-1.7	5.9	4.8	6.6
271 Newspapers	6.8	7.4	6.4	-0.6	2.4	-2.3	6.6	5.2	7.4
272 Periodicals	7.4	6.4	8.4	0.0	1.4	-0.5	4.2	4.2	4.7
2731 Book publishing	7.2	6.3	6.9	-0.3	1.4	-1.9	7.1	7.5	7.4
2732 Book printing	7.2	6.4	7.9	-0.3	1.5	-1.0	6.6	7.3	7.4
274 Miscellaneous publishing	6.9	6.4	6.9	-0.6	1.5	-1.9	6.4	4.7	6.3
275 Commercial printing ^{2/}	7.3	7.1	7.4	-0.2	2.1	-1.4	6.0	3.7	7.2
276 Manifold business forms	7.8	5.7	8.9	0.3	0.8	-0.1	5.5	2.8	7.7
277 Greeting card publishing	8.3	8.6	8.1	0.8	3.5	-0.8	3.7	2.8	3.9
278 Blankbooks and bookbinding	7.5	6.6	7.8	0.0	1.6	-1.1	5.4	2.6	7.3
279 Printing trade services ^{3/}	5.1	6.1	4.7	-2.2	1.2	-4.0	4.5	5.8	4.1

^{1/} Average annual rates of change are based on the linear least squares trends of the logarithms of the index numbers.

^{2/} Includes Lithographic platemaking services (SIC 2795).

^{3/} Excludes Lithographic platemaking services (SIC 2795).

SOURCE: U.S. Bureau of Labor Statistics, U.S. DOL News Release (86-37) and unpublished data for printing and publishing industries (SIC 271-279).

Table 13: Hourly Compensation Costs for Printing and Publishing Production Workers,
Selected Countries, 1982

Country or Area	Exchange Rate		Average Hourly Earnings in National Currency	Ratio of Additional Compensation to Hourly Earnings	Hourly Compensation		
	National Currency Unit	National Currency Units Per U.S. Dollar			National Currency	U.S. Dollars	Index U.S.=100
United States	Dollar	-----	8.74	29.0	11.27	11.27	100
Canada	Dollar	1.234	10.32	22.8	12.67	10.27	91
Hong Kong	Dollar	6.070	11.34	11.0	12.59	2.07	18
Israel	Shekel	24.27	73.91	40-45	105.32	4.34	39
Japan	Yen	249.1	1320	15.0	1518	6.09	54
Korea	Won	731.1	1070	26	1348	1.84	16
Singapore	Dollar	2.140	2.85	52	4.33	2.02	18
Taiwan	Dollar	39.12	47.35	4.0	49.24	1.26	11
Belgium	Franc	45.78	292.42	65.4	483.66	10.56	94
Denmark	Krone	8.344	81.66	21.3	99.05	11.87	105
France	Franc	6.579	34.82	73.0	60.24	9.16	81
Germany	Mark	2.428	15.88	66.8	26.49	10.91	97
Greece	Drachma	66.80	194	50	291	4.36	39
Ireland	Pound	.7040	3.74	30.9	4.90	6.95	62
Italy	Lira	1354	6075	87.5	11391	8.41	75
Netherlands	Guilder	2.672	16.63	66.1	27.62	10.34	92
Spain	Peseta	110.1	412	40	577	5.24	46
Sweden	Krona	6.284	44.25	61.0	71.26	11.34	101
Switzerland	Franc	2.033	20.63	30.0	26.82	13.19	117
United Kingdom	Pound	.5721	3.90	33.7	5.21	9.11	81

SOURCE: U.S. Bureau of Labor Statistics, unpublished data.

Table 14: Hourly Compensation Cost Indexes for Printing and Publishing
Production Workers, 22 Selected Countries, 1975-84

(Index U.S.=100)

Country/Area	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984
United States	100	100	100	100	100	100	100	100	100	100
Canada	94	101	107	114	120	126	132	138	144	150
Brazil	18	21	20	21	21	21	21	21	21	21
Hong Kong	12	12	13	16	17	19	18	18	16	16
Israel	34	37	37	33	39	39	38	39	40	36
Japan	48	50	55	71	65	61	64	54	57	57
Korea	8	10	13	15	21	17	15	16	17	17
Singapore	13	14	13	14	15	16	17	18	19	21
Taiwan	7	8	8	9	10	12	13	11	12	—
Belgium	112	110	120	135	146	150	114	94	87	—
Denmark	117	117	114	140	160	156	117	105	99	—
France	85	80	78	91	102	107	88	81	79	73
Germany	100	99	109	126	137	135	104	97	92	82
Greece	30	32	37	45	51	51	46	39	32	30
Ireland	52	48	49	59	68	77	66	62	59	—
Italy	88	74	77	86	95	95	79	75	78	—
Netherlands	104	100	107	124	134	130	97	92	86	—
Portugal	24	23	20	18	19	21	19	—	—	—
Spain	—	—	46	53	68	69	53	46	40	—
Sweden	122	131	133	134	149	151	127	101	84	—
Switzerland	104	104	102	137	147	142	121	117	112	99
United Kingdom	56	51	50	60	73	94	91	81	74	66

✓ Preliminary estimates.

SOURCE: U.S. Bureau of Labor Statistics, unpublished data, January 1986.

Table 15: Total Employment Effects for the
Printing and Publishing Industries Due to
Termination of the Manufacturing Clause
Under Selected Scenarios

SIC	Industry	Scenario			
		1	2	3	4
Percent of U.S. Shipments Displaced by Imports					
271	Newspapers	0	0	0	0.5
272	Periodicals	0	0	2	4
2731	Book publishing	0	2	4	8
2732	Book printing	2	4	8	12
Job Opportunity Losses					
271	Newspapers	4	44	202	2,429
272	Periodicals	1	126	2,051	4,101
2731	Book publishing	(z)	1,182	2,452	4,903
2732	Book printing	703	1,996	4,196	6,988
274	Miscellaneous publishing	(z)	14	71	142
275	Commercial printing	160	527	1,650	3,011
276	Manifold business forms	1	7	20	40
277	Greeting card publishing	(z)	9	22	43
278	Blankbooks and bookbinding	2	184	443	885
279	Miscellaneous printing services	40	158	431	788
Total		912	4,247	11,539	23,330

NOTE: (z)=negligible; job opportunity loss columns may not
sum to total due to rounding; derived from 1977 detailed
BEA 537-sector industry/commodity I-O table and labor
output ratios for 1982.

Table 16: Estimated Job Opportunity Losses in the
10 Most Affected Sectors Due to Termination
of the Manufacturing Clause
Under Selected Scenarios

SIC	Description	Scenario			
		1	2	3	4
		Percent of U.S. Shipments Displaced by Imports			
271	Newspapers	0	0	0	0.5
272	Periodicals	0	0	2	4
2731	Book publishing	0	2	4	8
2732	Book printing	2	4	8	12
I-0					
Sector		Job Opportunity Losses			
26	Printing and publishing	827	4,478	13,405	27,072
69	Wholesale, retail trade	111	600	1,795	3,625
24	Paper, allied products	78	420	1,258	2,541
73	Business services	69	373	1,115	2,253
65	Transportation, warehousing	43	232	694	1,402
74	Eating, drinking places	42	230	688	1,390
78	Federal government enterprises	24	132	396	799
72	Hotels	21	114	342	692
70	Finance and insurance	16	89	266	538
27	Chemicals	14	77	231	466
	All others	201	1,077	3,231	6,521
	Total	1,446	7,824	23,421	47,299

NOTE: Derived from 1977 aggregated 2-digit BEA industry/commodity I-0 table and BLS labor output ratios for 1982. Job opportunity loss figures for the printing and publishing sector differ from the total for printing and publishing in Table 15 since the 15 detailed printing and publishing subsector industry/commodity I-0 requirements have been aggregated to single relation for the entire printing and publishing sector.

Table 17: Direct Employment Effects for the
Printing and Publishing Industries
of Termination of the Manufacturing Clause
Under Scenarios Used in This Study
and Those Used in the 1981
Department of Labor Study

SIC	Description	Scenario				1981 DOL Study	
		1	2	3	4	Low	High
		Percent of U.S. Shipments Displaced by Imports					
271	Newspapers	0	0	0	0.5	0	2
272	Periodicals	0	0	2	4	10	15
2731	Book publishing	0	2	4	8	30	45
2732	Book printing	2	4	8	12	}	}
274	Miscellaneous publishing	0	0	0	0		
275	Commercial printing	0	0	0	0	15	35
276,8	Manifold business forms; blankbooks and bookbinding	0	0	0	0	0	5
277	Greeting card publishing	0	0	0	0	0	5
279	Miscellaneous printing services	0	0	0	0	10	15
Direct Job Opportunity Losses (thousands)							
271	Newspapers	--	--	--	2.0	--	3.4
272	Periodicals	--	--	1.8	3.6	1.4	2.1
2731	Book publishing	--	1.2	2.4	4.7	3.6	20.3
2732	Book printing	0.7	1.4	2.8	4.2		
274	Miscellaneous publishing	--	--	--	--	5.9	11.8
275	Commercial printing	--	--	--	--	52.7	122.9
276,8	Manifold business forms; blankbooks an bookbinding	--	--	--	--	--	0.7
279	Miscellaneous printing services	--	--	--	--	4.1	6.1
	Total	0.7	2.6	7.0	14.6	77.6	172.2

NOTE: (z)=negligible; job opportunity loss columns may not sum to total due to rounding.

Source: Table 15 with job opportunity loss estimates adjusted to eliminate indirect losses within the printing and publishing sector; and M.F. Moore, The Employment Effects of Eliminating the Manufacturing Clause of the U.S. Copyright Law, U.S. DOL (1981), Table 2.

Table 18: Total Employment Effects of
Termination of the Manufacturing Clause
Under Different Displacement Assumptions
for the Book Printing Industry,
Current Study and USITC

Industry	Job Opportunity Losses With Output Displacement of			
	2 percent		10 percent	
	DOL	USITC	DOL	USITC
Book printing	703	551	3,513	2,645
Other printing and publishing	209	181	1,045	381
Total printing and publishing	912	732	4,558	3,526
Book printing and other printing-related industries	827	732	4,137	3,526
Paper products	78	76	388	371
Other	541	599	2,703	2,955
Total	1,446	1,407	7,228	6,852

Source: Table 15, Table 16, and special calculation (for 10 percent output displacement) and United States International Trade Commission, Study of the Economic Effects of Terminating the Manufacturing Clause of the Copyright Law (July 1983), p. 99.

APPENDICES

Appendix A: Methodology

The direct and indirect effects of a change in final demand for printed matter on employment were estimated through the following steps:

1. Derive 1982 labor-output ratios, using data on 1982 employment and 1982 value of shipments deflated to 1977 prices, for the 15 six-digit printing and publishing categories of the 1977 Bureau of Economic Analysis detailed 537 industry-commodity input-output (I/O) table (or the 79-sector aggregated I-O table for economy wide effects.) These are the direct requirements coefficients for labor.
2. Multiply each labor-output ratio by the particular industry's total requirements coefficient (obtained from the I/O table) and which shows the output of the industry generated by a unit (one dollar) change in final demand for a specific commodity. This product is the employment required by an industry to produce the output generated by a one dollar change in final demand. These employment multipliers are given in Appendix Table 1 and Appendix Table 2 below. Appendix Table 3 presents the real value of 1982 shipments of the directly-affected sectors and employment multipliers per million dollars of output displacement.
3. For sectors producing outputs directly covered by the Manufacturing Clause, estimate the likely percentage of final demand that would be displaced by imports (the output displacement scenarios). These estimates are based on judgements regarding the susceptibility of output to overseas production and other factors such as length of run, predictability of demand, time-sensitivity, etc. The only four sectors assumed to be directly affected by termination of the Manufacturing Clause are book printing, book publishing, periodicals, and newspapers.
4. Using the output displacement estimates from 3 (above) and 1982 U.S. production data valued at 1977 prices (see Appendix

Table 3), calculate the reduction in value of final demand for the four sectors (i.e., for book printing, book publishing, periodicals, and/or newspapers).

5. Take the product of the multiplier (from step 2 above) times the reduction in final demand (from step 4) to obtain the employment requirements. Sum over all 15 sectors of the publishing and printing industries (or over 79 sectors for the entire economy) to obtain the total (direct and indirect) employment requirements.

Appendix Table 1

Employment Multipliers for Clause Affected Sectors within Printing and Publishing:
 Number of Employees Required (directly and indirectly) in 1982 by all industries within
 Printing and Publishing to Produce Output Generated by a \$100 million Change (in 1977 dollars)
 in the Final Demand for Selected Printing and Publishing Products

SIC	Industry	I-O Sector	Newspapers	Periodicals	Book	
					Publishing	Printing
271	Newspapers	26.0100	2,959.9086	71.7803	34.7447	14.7437
272	Periodicals	26.0200	1.9436	1,128.0819	122.5906	2.4583
2731	Book publishing	26.0301	0.2118	54.9195	1,167.2648	1.1386
2732	Book printing	26.0302	1.3022	128.2872	583.2588	2,358.7702
274	Miscellaneous publishing	26.0400	1.3554	26.7751	13.1497	1.5219
2751, 2, 4	Commercial printing	26.0501	44.9417	369.1488	201.8459	536.3801
2753	Engraving and plate printing	26.0801	1.0261	4.3843	2.2388	4.0734
276	Manifold business firms	26.0601	1.8692	4.2807	5.0084	2.9109
277	Greeting card publishing	26.0700	0.0816	2.0256	8.5273	0.9638
2782	Blankbooks and looseleaf binders	26.0602	1.1882	3.5389	3.6164	1.9116
2789	Bookbinding and related work	26.0802	0.8019	43.2123	175.2079	3.7740
2791	Typesetting	26.0803	2.1232	51.1442	61.8350	107.0564
2793	Photoengraving	26.0804	1.2515	4.7620	3.2357	7.2042
2794	Electrotyping and stereotyping	26.0805	0.0915	0.3052	0.2442	0.6410
2795	Lithographic plate- making and services	26.0502	3.8464	15.9417	12.1619	19.4770
27	Printing and publishing	26	3,021.9429	1,908.5876	2,394.9301	3,073.0360

SOURCE: Derived from 1977 detailed BEA 537-sector industry/commodity I-O table and
 labor output ratios for 1982.

Appendix Table 2

Employment Multipliers: Number of Employees Required
(directly and indirectly) in 1982 by all Industries to Produce
Output Generated by a Million Dollar Change (in 1977 dollars)
in the Final Demand for Printing and Publishing Products

I-O Sector	Description	Employment Requirements per million dollars of shipments (employee-years)
26	Printing and publishing	27.8932
69	Wholesale, retail trade	3.7349
24	Paper, allied products	2.6183
73	Business services	2.3209
65	Transportation, warehousing	1.4448
74	Eating, drinking places	1.4321
78	Federal government enterprises	0.8232
72	Hotels	0.7126
70	Finance and insurance	0.5540
27	Chemicals	0.4801
12	Maintenance, repair construction	0.4506
20	Lumber, wood products	0.4468
32	Rubber, miscellaneous plastics	0.3946
68	Electric, gas, water, sanitary	0.2537
66	Communications, non-radio, television	0.2506
79	State and local government enterprises	0.2404
71	Real estate, rental	0.2381
64	Miscellaneous manufacturing	0.1892
42	Fabricated metal products	0.1887
16	Fabrics, yarn, etc.	0.1844
	Other	3.8822
	Total	48.7336

Source: Derived from 1977 aggregated 2-digit BEA industry/commodity I-O table and labor output ratios for 1982.

Appendix Table 3

1982 Value of Shipments and Employment Multipliers for Newspapers,
Periodicals, Book Publishing, and Book Printing
(shipments valued in millions of 1977 dollars and
1982 employment requirements per million
dollars of shipments in 1977 dollars)

SIC	Industry	Shipments	Employment Multiplier per million dollars of shipments
271-	Newspapers	13,739.1	30.219429
272-	Periodicals	7,975.8	19.085876
2731-	Book Publishing	5,060.6	23.949301
2732-	Book Printing	1,483.2	30.730380
	Total	28,258.7	48.73359

NOTE: Job opportunities per percentage point of output displacement are:

SIC 271 - Newspapers	4,151.8
SIC 272 - Periodicals	1,522.3
SIC 2731- Book Publishing	1,212.0
SIC 2732- Book Printing	455.8

Economy-wide (final demand
change in SIC 271,2,3 only) 13,771.5

Appendix B: Comparison with 1981 DOL Study

The estimates of the potential employment effects associated with termination of the Manufacturing Clause presented in this report differ substantially from those given in the 1981 Department of Labor (DOL) study by Moore.^{1/} The basic methodology, which:

- o accounts for direct changes in a domestic industry's level of output as a result of displacement by imports;
- o accounts for changes in output (i.e., indirect changes) in output of other supplier industries in the economy through the use of input-output (I-O) techniques; and
- o translates changes in output into changes in job opportunities through the use of labor-output and I-O industry-product requirements coefficients.

remains unchanged in the two studies. This same basic approach has been used extensively by DOL in previous analyses of the impact of changes in international trade patterns on domestic employment.^{2/}

The following differences in the two studies contribute to some of the disparities between the earlier and current job opportunity loss estimates:

1) While the 1981 DOL study used 1976 labor-output ratios to translate output changes into changes in job opportunities, the current study uses corresponding ratios updated to 1982. Since output per worker in the newspapers, periodicals, book printing, and book publishing sectors increased by 5.4 percent between 1976 and 1982, the concomitant decline in the labor-output ratios means that, for a given decline in output, the more recent labor-output ratios will yield lower estimates of job opportunity losses than the earlier ones.

2) The 1981 DOL study relied on the 1967 Bureau of Economic Analysis (BEA) input-output tables to estimate the potential employment effect of increased imports of Clause-covered printed materials on industries supplying the U.S. printing and publishing industries; the current study uses the recently-released 1977 BEA I-O tables. The use of the more recent I-O tables gives rise to two sources of differences vis-a-vis the earlier analysis:

First, the 1977 I-O tables contain more industry detail for the printing and publishing industries than than was contained in the 1967 tables. The 1967 I-O tables contained only 8 sectors to measure economic interactions within the publishing and printing industries, and therefore certain assumptions had to be made in the earlier study regarding the relationship between sectors which were not specifically provided for. The level of detail in the 1977 I-O table is richer, with 15 detailed sectors used to describe intra-industry relationships in the printing and publishing industries. Because the 1977 I-O table is more disaggregated, fewer assumptions regarding the behavior of intra-industry relationships had to be made in the current study.

Second, the coefficients in the 1977 I-O table differ from corresponding ones in the 1967 I-O table and reflect the rapid diffusion of new technological innovations which occurred throughout the printing and publishing industries as well as other industries throughout the economy between 1967 and 1977, improvements in productivity, and changes in industry input mix.

3) The current analysis incorporates more recent, and more detailed, information about the industries than was available at the time of the earlier study. With the publication of the 1982 Census of Manufactures (in 1985), detailed data on shipments by type and frequency of publication have become available. These data have permitted more refined estimates of the amount of output of the printing and publishing industries which might be covered by the Clause and susceptible to foreign manufacture.

4) The current report assumes that a narrower range of products are covered by the Clause, and susceptible to foreign production if the Clause were terminated, than in the earlier study. In the 1981 DOL study, it was assumed that domestic production in sectors of the domestic printing and publishing industries would be directly displaced by imports over the following probable ranges:

<u>Industry</u>	<u>Value of Shipments Displaced by Imports</u>
Newspapers	0 to 2 percent
Periodicals	10 to 15 percent
Book printing and publishing	30 to 45 percent
Miscellaneous publishing	20 to 40 percent
Commercial printing	15 to 35 percent

Industry	Value of Shipments Displaced by Imports
Manifold business forms, blankbooks and bookbinders	0 to 5 percent
Greeting card publishing	0 to 5 percent
Miscellaneous printing services	10 to 15 percent

The more disaggregated I-O table for 1977 permitted separation of book publishing and book printing activities in the current study. In addition, the current study has benefitted from information developed by the United States International Trade Commission in a 1983 study,^{3/} and other information^{4/} which has become available since the earlier DOL study was completed, to refine the sector coverage and susceptibility to foreign production assumptions.

Thus, in the current study, it is assumed that termination of the Manufacturing Clause would directly affect only the output of four sectors within the printing and publishing industries (compared to eight sectors in the earlier study) and that the percentages of output which would be displaced by imports would fall within the following ranges:

Industry	Value of Shipments Displaced by Imports
Newspapers	0 to 0.5 percent
Periodicals	0 to 4 percent
Book publishing	0 to 8 percent
Book printing	2 to 12 percent

Appendix B: Footnotes

^{1/} Michael F. Moore, The Employment Effects of Eliminating the Manufacturing Clause of the U.S. Copyright Law, Bureau of International Labor Affairs, U.S. Department of Labor (15 June 1981); reproduced in Congressional Record (13 July 1982), pp. S8100-S8103.

^{2/} E.g., Thomas O. Bayard and James A. Orr, Trade and Employment Effects of Tariff Reductions Agreed to in the MTN, Bureau of International Labor Affairs, U.S. Department of Labor, Economic Discussion Paper 1 (April 1980); Thomas O. Bayard, James A. Orr, Joseph Pelzman and Jorge Perez-Lopez, Trade and Employment Effects of Granting Most-Favored-Nation Status to the People's Republic of China, Bureau of International Labor Affairs, U.S. Department of Labor (August 1980).

^{3/} United States International Trade Commission, Study of the Economic Effects of Terminating the Manufacturing Clause of the Copyright Law, Publication 1402 (July 1983).

^{4/} E.g., letter from the Register of Copyrights to Representative Kastenmeier, dated December 17, 1981, as reproduced in Congressional Record (13 July 1982), pp. S8105-S8106.

Statement of the
American Library Association
to the
Subcommittee on Patents, Copyrights and Trademarks
of the
Senate Judiciary Committee
on
S. 1822 and S. 1938
on the
Manufacturing Clause of the Copyright Law

January 21, 1986

The American Library Association strongly opposes S. 1822, a bill which would extend the manufacturing clause of the copyright law so as to apply to all printed material and to make it permanent. ALA also opposes S. 1938, which would extend the present limited manufacturing clause into the indefinite future. At present the clause, which is due to expire on July 1, 1986, applies only in essence to books by American authors, who lose their U.S. copyright protection and may have their books barred from the United States if they are printed abroad, a very serious penalty which few authors or their publishers will risk. The clause now protects a small fraction of the \$3 billion annual production of books in the United States from foreign printing competition, whereas S. 1822 would extend this protection to the \$35 billion annual U.S. production of all printed products.

The ALA believes the Congress should go no further than to extend the present manufacturing clause for a very short period of time. There is no economic justification for either aspect of S. 1822; making the clause

permanent or extending its scope. In the calendar year 1985, the Department of Commerce reports that the United States enjoys a favorable balance of trade both for books and for all printed matter, as follows:

	<u>Exports</u>	<u>Imports</u>
Books	\$600 million	\$560 million
All printed matter	\$1.3 billion	\$1.2 billion

This was a year in which the dollar on average was at an all time high in relation to other currencies, hampering exports and encouraging imports. The dollar has since come down significantly and the Administration has wide support for encouraging further reduction.

It is true that S. 1822 proposes an "escape hatch" from the manufacturing clause, eliminating its application to printed material from countries certified by the U.S. Trade Representative as providing adequate and effective means under their laws for all foreign (not only U.S.) nationals to secure, exercise and enforce exclusive rights to copyrights and impose no tariff or nontariff barriers to trade in all printed products. The Congress should call upon the appropriate government agencies to advise it as to which countries would at this time appear to qualify for this exemption. We believe that there would be very few, if any.

We urge the Congress to take no action at this time on S. 1822, but, if it is felt that some action is required, to enact a simple extension of the clause for a short period of years. This will provide an opportunity for detailed studies to be made of the ramifications of S. 1822 and the economic effects of the manufacturing clause, not only now but in the next few years during which time the level of the dollar and the present large trade deficit will be receiving intensive consideration in a wide context. In particular, the Congress should request the International Trade Commission to bring up to date its July 1983 report to the House Ways and Means Committee entitled Study

of the Economic Effects of Terminating the Manufacturing Clause of the Copyright Law. In that report the Commission found that: contrary to the claims of proponents of the clause as it now stands, repeal would potentially result in reduction in U.S. employment in printing and related industries of only some 1,400 to 6,850 jobs, far less than the annual turnover in these industries.

Why is the American Library Association interested in this question? One answer is history---we have opposed the manufacturing clause, unique to the United States, for decades. More important at this time are the price increases on all printed matter which would result from giving U.S. producers a monopoly position, and the reduction of the availability of books to library users and all book purchasers. The Association, with its more than 42,000 members in all types of libraries---public, school, higher education, business and specialized---represents the consumers of books counted in the tens of millions of library patrons as well as many more millions of readers.

We urge you, the Congress, to go no further than to enact a simple, short extension of the manufacturing clause in its present form.

